

## EXHIBIT 31

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**Date: November 25, 1996**

HONORABLE TIMOTHY J. SULLIVAN, J.S.C. AND JURY

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I N D E X

Summations:

Mr. Weichsel

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Ms. Baglivi

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The Court's Charge to the Jury

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1 THE COURT: Are we ready to proceed, counsels?

2 MS. BAGLIVI: Yes, Your Honor.

3 MR. WEICHSEL: Yes, judge.

4 THE COURT: Bring the jury up please.

5 (PAUSE - JURY ENTERS THE COURTROOM)

6 THE COURT: All right, please answer when your name  
7 is called.

8 (JURY ROLL CALL TAKEN - ALL PRESENT)

9 THE COURT: You have a cold? You'll be able to  
10 communicate with your fellow jurors do you think?

11 JUROR: Yes.

12 THE COURT: Okay.

13 Good morning, ladies and gentlemen. Did you -- any of  
14 you read any newspaper articles or hear anything about this  
15 case over the weekend? And did anybody -- did any of you  
16 discuss this case with anybody else? All right.

17 The reason my clerk was delayed, she was downstairs  
18 in the cafeteria trying to make sure we had our signals all  
19 correct. Both Ms. Baglivi and then -- I'm sorry, Mr. Weichsel  
20 will address you first and then Ms. Baglivi will afterward.  
21 And when they -- when they are finished their summations either  
22 between the two of them or after they both present their  
23 summations we will have a -- what is it, a list?

24 THE COURT CLERK: Yeah.

25 THE COURT: That you can order any lunch from

1 downstairs and then by then you will come back in again and I  
2 will then give you the charge and when you -- when you leave  
3 the courtroom to deliberate your lunch will be ready for you  
4 then, hopefully. All right? So that's -- that's the plan. Now  
5 whether we -- whether you order your lunch between summations  
6 by the attorneys or after their summations or before I give you  
7 the charge is something that will depend on the time. All  
8 right?

9           Now counsel will present their final arguments to you  
10 this morning. As I mentioned, counsel for the defendant will  
11 have the opening argument this morning. And that is just a  
12 reverse of how we started. If you recall, the prosecution went  
13 first and the defendant's attorney followed her. And when we  
14 end the case it's the -- it's the reverse.

15           Now counsel for the State will then have its  
16 opportunity when Mr. Weichsel is finished to present her  
17 argument. Now the attorneys in making these arguments to you  
18 will be commenting upon the testimony that you have heard and  
19 the evidence which had been presented to you in this case. Now  
20 they, as you will be recalling the evidence that has been  
21 presented. They will not intentionally try to mislead you  
22 however, if their recollection of the evidence differs from  
23 what your recollection is you must follow your own  
24 recollection. What the attorneys say is not evidence. These  
25 final arguments as I mentioned are not to be considered by you

1 as evidence in this case or are they instructions in the law; I  
2 will give you the instructions in the law. Their arguments are  
3 however, intended to help you better understand the contentions  
4 of each side the issues that you are to decide. You should  
5 give both sides your close attention.

6 Now, Mr. Weichsel, if you are ready you may proceed  
7 with your final argument.

8 MR. WEICHSEL: Thank you.

9 May -- may it please the court, Ms. Baglivi, Jamie,  
10 ladies and gentlemen of the jury. I just want to start out by  
11 sincerely thanking all of you for the time and devotion that  
12 you put into this case. We've been here about three weeks now  
13 and the attention that you've paid has just been remarkable.  
14 I've had an opportunity to observe you and you've been riveted  
15 by the testimony. And it's a wonderful tribute to our jury  
16 system to have jurors that are as attentive and as careful and  
17 thoughtful as you. And whatever the outcome of the case, I  
18 really, really want to thank all of you for serving her and  
19 being jurors in this case.

20 Ms. Baglivi told you in her opening statement that  
21 this case was about the American Dream. And she told you her  
22 version of the American Dream and James Polites' version of the  
23 American Dream. And as this case has unfolded and I've thought  
24 about it I too think this case is about the American Dream,  
25 only it's -- it's a different American Dream.

1           We all as parents and children have an American  
2 Dream, a dream that we'll grow up in a safe and secure home, a  
3 dream that as children we will be unconditionally loved by our  
4 parents, a dream as parents that we will give our children  
5 stability and emotional support, that we will be there to  
6 nurture and take care of and love our children. And in the  
7 case of Jamie Farthing it is a case of the American Dream gone  
8 awry.

9           She came into this world, and she's only 20 years  
10 old, she was 18 at the time of these events. And we heard a  
11 whole litany from her family, from Dr. Kleinman, from Dr.  
12 Apolito, from Dr. Simring about her upbringing and what  
13 happened to her as she was growing up. And Ms. Baglivi is going  
14 to tell you in her closing well, she's had a bad upbringing, so  
15 what. Why should it make a difference that she had a "bad  
16 upbringing"? And I want to talk about that because it's --  
17 we're not here because she had bad upbringing. We're here, and  
18 I'm here as her attorney because of what this horrible litany  
19 of events did to her mental state, did to her psyche, did to  
20 her ability to consciously make decisions. And those are all  
21 issues that you, ladies and gentlemen of the jury, are going to  
22 have to deal with in the jury room. And each of you took an  
23 oath as jurors that you could deal with those issues honestly,  
24 dispassionately, carefully and with no bias and no sympathy.  
25 And that's really all that I can ask for you when you go into

1 the jury room and deliberate, because one of the elements of  
2 all of these offenses is state of mind; it is purpose and  
3 knowledge or recklessness depending on the offense. And I'll  
4 talk about that a little bit more.

5           You know, we all have our functions here. Judge  
6 Sullivan's going to tell you about the law. He's going to tell  
7 you about the law of robbery and kidnapping and purposely and  
8 knowing murder and aggravated manslaughter and manslaughter and  
9 felony murder and reckless possession. And in the context of  
10 that law you're going to have to make your decision as to what  
11 is going on and what the facts were and how we interpret the  
12 facts to the law.

13           And as Jamie Farthing sits here today I don't think  
14 there's tremendous argument here about certain facts; that  
15 Robert Hippman was robbed, that James Polites was murdered.  
16 What you have to decide is not what Ivy Demolena's role was,  
17 not what Christopher James' role was, not what Beninio  
18 Rosario's role was, not what Efrim Popolayo's role was, but  
19 Jamie Farthing's role. Did she -- was she an accomplice to a  
20 purposeful and knowing murder? Did she purposely and knowingly  
21 engage in robberies? Did she purposely and knowingly engage in  
22 kidnappings? Did she possess weapons with intent to use? Did  
23 she possess weapons with an unlawful purpose? Those are the  
24 basically gamut of the charges that you're going to have to  
25 decide here.



1           Now let's step back. It's the spring/summer of 1994.  
2 Jamie Farthing is kicked out of her parents' house. Oh, the  
3 prosecutor says, Dr. Simring would say, she had a car. She  
4 didn't have any money, she didn't have any skills, she had  
5 nowhere to go. She had a boyfriend but she couldn't stay  
6 there. And her boyfriend introduces her to Chris James and Ivy  
7 Demolena.

8           And you've heard a lot about Ivy Demolena during this  
9 trial, but you know, one thing I -- I think that comes across  
10 through this trial is Ivy Demolena's personality, the fact that  
11 she's domineering, she's older, she's 26 or 27 years old.  
12 Jamie Farthing's 18 years old.

13           You heard Edward Kummer testify. He -- he was  
14 Jamie's boyfriend. He said you know, Jamie had demons, she was  
15 really afraid to go to her mother's house because of some  
16 Satanism and she talked about what happened to her when she was  
17 a child between her mother and her father. And remember Edward  
18 Kummer was a State's witness, he came in here for the  
19 prosecution. But he -- you know, the prosecutor is going to say  
20 well all this stuff about Jamie Farthing is made up after her  
21 arrest. Well it's not, it wasn't made up after the arrest,  
22 because she talked to Edward Kummer about it in the summer of  
23 1994 before she went to New York and discussed her fears, her  
24 traumas, the abuse, the emotional pain, the physical pain; she  
25 talked about all that to Edward Kummer.

1           And Edward Kummer also tells you that Ivy Demolena  
2 was a very dominating person. Ivy Demolena dominated Chris  
3 James and Ivy Demolena dominated Jamie Farthing. One of the  
4 things Dr. Simring said, and he's the State's doctor that  
5 testified on Thursday, was well she's got a personality  
6 disorder of an unspecified type and one of the traits is  
7 dependency, tremendous need. And -- and I don't think Dr.  
8 Apolito or Dr. Kleinman disagrees with that. They -- they go  
9 further, they talk about post-traumatic stress syndrome, being  
10 like a shell shocked war veteran from the years of trauma and  
11 abuse. I mean the testimony of Edward Kummer is very, very  
12 important in terms of Jamie Farthing's state of mind, in terms  
13 of you determining what Jamie Farthing's state of mind is.  
14 It's very important testimony. And -- and you recollect what  
15 he said about her background and her fears and her fears of  
16 going to her mother.

17           Well the prosecutor may come in and say well, you  
18 know -- but certainly Jamie Farthing went to Robert Hippman's  
19 house and it was voluntary on her part, she voluntarily did  
20 that. But if you recall her statement -- and her statement was  
21 read to you by Investigator Alver -- and when you recount her  
22 statement, her statement was given on the 17th which was about  
23 two days after she was arrested, two and a half days or so. It  
24 was given up here in Hackensack after she waived extradition  
25 and she flew up to Bergen County with Investigator -- with

1 Detective Hines and Investigator Alver. And when you recall  
2 that statement being read to you, and I submit the one thing  
3 you can say about that statement was that it really didn't  
4 sound like she was telling something that was happening to  
5 herself; it sounded like it was in a movie. It sounded like it  
6 wasn't happening to her.

7 And what's -- what's the importance of -- what's the  
8 importance of the fact that it didn't sound like it happened to  
9 her? Well when you -- you listen to what Dr. Kleinman and Dr.  
10 Apolito say, they say that she, Jamie, because of a post-  
11 traumatic stress syndrome goes into disassociative states where  
12 you kind of act where you -- where you're really not there.  
13 You know, you're there but you're not there. And certainly  
14 Jamie Farthing was there on August 4th 1995 in a physical  
15 sense, but was she really there in a mental sense. Did she  
16 really understand the gravity of her acts? Did she act with  
17 purpose in the sense that she intended to do this, or did she  
18 act with knowledge, did she really know? I mean if -- if you  
19 look -- if you look at some of the words in her statement --  
20 you know, it's -- it's like a child talking. She -- when she's  
21 talking about, you know, her discussions with -- with Ivy  
22 Demolena and she says, "It was foolproof because she had it  
23 planned out so good and everything." You know, then  
24 Investigator Alver asked her about, you know -- you know,  
25 acting as an escort or whatever she said that, "Well, I didn't

1 know how we were going to meet them until we got to New York  
2 and she worked in an escort service which I didn't know what it  
3 was till later."

4 "And what did you find out it was?"

5 "It was like girls coming over to like do stuff with  
6 guys."

7 Question, "By stuff do you mean sex?"

8 Answer, "Yes."

9 "Sex for money?"

10 "Uh-huh, yes."

11 It's like a child talking.

12 "And you didn't realize that you were dressed for  
13 this act of being an escort and having sex with this  
14 gentleman?"

15 Now she's referring to -- to Mr. Hippman.

16 "Ivy told me that I just had to dress nice, that the  
17 place we were going to because they might have though  
18 something, I don't know because she knew him and everything."

19 You know, it's -- it's this other worldly quality.

20 "And you took those -- these ties for what reason?"

21 "Because they were pretty."

22 "And what were you going to do with them?"

23 "I was going to keep them."

24 Is this -- is this an adult, a mature adult talking?

25 "Another item is a Mexican coin. Actually it's more

1 than one, these are three Mexican coins. Do you recognize  
2 them?"

3 "Yes, they came from his desk."

4 Question, "Meaning Mr. Hippman?"

5 "Yes."

6 Question, "And you kept them also?"

7 "Yes."

8 "Why did you keep them?"

9 "Because they looked neat. I never saw any money  
10 like that."

11 "Did you ever see any money like that after this  
12 robbery?"

13 "No, that's why I kept them, it looked neat."

14 "Was there any conversation about that robbery after  
15 it was over?" Again, referring to Hippman.

16 "Not really. I just was telling them I couldn't  
17 believe I had done that and I told them I was shaking the  
18 whole. And Ivy was just telling me it was going to be okay and  
19 all of this other stuff and that's it."

20 "Was there any talk of killing James Polites prior to  
21 going to the house?"

22 Answer, "No, not that I know of, not while I was  
23 around."

24 Well you know, the prosecutor is going to say Bob  
25 Hippman testified that Jamie held the gun and she held it

1 steady and all that, but Jamie in her statement says, you know,  
2 I was so nervous I couldn't even hold the gun. Ivy grabbed --  
3 grabbed it from me because Mr. Hippman was laughing at me. And  
4 you're going to have to assess credibility. And Robert Hippman  
5 is the same man who tells you that when he got the phone call  
6 from Ivy Demolena earlier that day or that night and he agreed  
7 to have Ivy Demolena and Jamie Farthing come over that he  
8 wasn't -- there was no intention of having any sexual relations  
9 with these women. And when he called up Laffaire Escort Service  
10 that Christmas Eve from his parents' house in Oradell because  
11 he -- because he was lonely and he had just broken up with his  
12 girlfriend or fiancée or whatever and he was going to pay \$200  
13 an hour or \$300 or whatever it was he was going to pay -- oh, I  
14 really wasn't calling up to -- to have sex with them. And then  
15 when he went -- went to the motel, the Oritany Best Western and  
16 called up Laffaire again, well he wasn't going to have sex with  
17 them either.

18 And he's the same gentleman who testified well I saw  
19 a photo array of -- of Jamie Farthing's picture and I picked  
20 out her picture, and even though I saw her picture in the  
21 newspaper earlier before that, that really didn't influence me  
22 at all and that really had nothing to do with me picking out  
23 Jamie's picture. Well the fact that he picked out Jamie's  
24 picture is irrelevant because I -- you know, obviously Jamie  
25 Farthing was there. But it goes to Mr. Hippman's credibility

1 when he testifies and when he says that you know, Jamie  
2 Farthing held the gun as opposed to what Jamie said, was I was  
3 so nervous, I couldn't go through with it, I was shaking and I  
4 -- Ivy grabbed the gun from me. And it really goes to Jamie  
5 Farthing's state of mind whether she was there acting with  
6 purpose and acting with knowledge, and those are all issues  
7 that you're going to have to decide in the jury room.

8 Now we come to the next day, August 5th. The person  
9 that arranged all this was Ivy Demolena. She set it up, she put  
10 it all in motion. And Jamie Farthing tells you in her  
11 statement I didn't know -- I had no idea that James Polites was  
12 going to be killed, I didn't know that in advance. I didn't  
13 know it, I didn't contemplate it, I didn't think of it. And on  
14 that night in question it's pretty clear that Jamie Farthing  
15 wasn't carrying any weapons. She went along; she didn't know  
16 there was going to be a murder. She didn't know that there was  
17 going to be a killing. She didn't participate as an  
18 accomplice, as an aider, as an abetter in a murder. She didn't  
19 take part in the murder. She was there because Ivy Demolena  
20 asked her to be there.

21 And one of the things the judge is going to charge  
22 you on and he's going to talk to you about is this concept of  
23 felony murder, that if somebody knowingly or purposely  
24 participates in certain enumerated felonies in the statute and  
25 -- and one of them is robbery and one of them is kidnapping, if



1 they act with purpose and knowledge they may be guilty of  
2 felony murder even though they didn't kill somebody themselves.  
3 But there's certain affirmative offenses that the judge is  
4 going to talk to you about in the felony murder statute that  
5 the actor, meaning Jamie, did not commit the homicidal act or  
6 in any way solicit, request, command, cause or aid the  
7 commission thereof. And not armed with a deadly weapon and had  
8 no reasonable ground to believe that any other participant was  
9 armed with a weapon and had no reasonable ground to believe  
10 that any other participant engaged -- intended to engage in  
11 conduct likely to result in death or serious physical injury.

12 It's pretty clear that Jamie Farthing didn't know  
13 what Ivy Demolena's intention was when she went to Edgewater on  
14 August 5th 1994. It's pretty clear that Jamie never went there  
15 and it's pretty clear that she didn't aid or abet or assist or  
16 help in the murder of James Polites. And these are all very  
17 difficult concepts. And these are all things that you're going  
18 to have to go over in the jury room carefully.

19 Another thing you're going to have to deal with is  
20 Jamie Farthing telling Dr. Kleinman and telling Dr. Apolito and  
21 telling the social worker, Billie Feinberg, who Dr. Kleinman  
22 and Dr. Apolito and to a certain extent Dr. Simring relied  
23 upon, about her substance abuse. The fact that she -- she  
24 started using alcohol at a very, very young age, marijuana at a  
25 young age, cocaine. But it appears that her favorite drug was



1 hallucinogens, drugs like LSD that cause hallucinations and  
2 flashbacks.

3           And the prosecutor is going to say well, you know,  
4 she really wasn't wiped out with Hippman or wiped out with  
5 Polites because there really wasn't a drink. But what we don't  
6 know and there hasn't been testimony on is what Jamie Farthing  
7 had before she went to Hippman and before she went to Polites.  
8 We know that -- that wine was served at Hippman's residence, it  
9 was the Pino Grigio Santa Marguerita. And we know that there  
10 was Gavi de Gavi and Gold Schlagher liqueur served at the  
11 Polites and in terms of the Gold Schlagher, the bottle was  
12 almost empty and there was a glass with Gold Schlagher liqueur  
13 in it, that's the testimony, that's the cinnamon flavored  
14 liqueur with little flecks of gold in it, and we know that.  
15 And we wonder if, you know, Jamie Farthing was straight and  
16 hadn't had years of drug abuse whether she would have taken --  
17 participated in any of this. I submit not -- I submit not,  
18 ladies and gentlemen of the jury.

19           You know, to show you Jamie Farthing's role. At  
20 Polites' house who finds this big wad of cash? Jamie Farthing  
21 does in a pillow. Who winds up with the big wad of cash? Ivy  
22 Demolena. When they go to New York and they go to King  
23 Jewelers and that Super Bowl ring is pawned well what -- what  
24 does Jamie Farthing wind up with? A \$15 Goofy ring, that was  
25 in her statement, and this -- she doesn't use drugs, look what

1 she picks out, a little ring with -- I think it was \$150 or  
2 \$180, there's testimony, and it's got -- you know, it spins and  
3 it's got a marijuana leaf. That's -- that's what Jamie  
4 Farthing winds up with.

5 And what -- what do the police find when they -- when  
6 they go back to Georgia? This very mature person, three ties -  
7 - three ties -- three neckties. What else did they find at her  
8 mother's house in Georgia? A Mont Blanc pen, three Mexican  
9 coins because they're neat -- they were neat, three Mexican  
10 coins. And what else -- what else have we got here? Glass  
11 balls -- I'm not going to take them all out -- and some brass  
12 golf balls.

13 This is your -- this is your vicious criminal? This  
14 is your robber, your murderer? Mexican coins, ties, brass  
15 balls and a Mont Blanc pen, and a ring with a marijuana leaf  
16 and -- and a Goofy ring. The prosecutor is going to say well,  
17 you know, the money went to the fancy hotels. Well you don't  
18 think in a million years Jamie Farthing, who had never been to  
19 New York before, didn't know New York, couldn't find her way  
20 around New York in -- in all her years because she's never been  
21 here. You don't think Jamie picked out those hotels, do you?  
22 Don't you think it was Chris James and Ivy Demolena who picked  
23 out those hotels? Do you think it was Jamie who signed in as  
24 Mr. Farthing from High Rock Road, Conyers, Georgia? Or even  
25 the one time where -- where it was her own name, do you think

1 she's the one that registered? I think in the case of Mr.  
2 Farthing it was Chris James and in the other case Ivy Demolena.  
3 Again, she was used by Ivy Demolena. Ivy Demolena used her,  
4 Ivy Demolena used Chris James, Ivy Demolena even used her own  
5 brother.

6           The prosecutor is going to say but what about Magda  
7 Rahey? Ivy Demolena's sister, half sister, whatever, who says  
8 well on the telephone I heard some voices in the background  
9 when -- when -- when she called me and said that she's going to  
10 have to do something to some guy or something like that. Well  
11 you wonder about Magda Rahey, Magda Rahey who got some of the  
12 stolen property here that was found on her possession, Magda  
13 Rahey who wasn't prosecuted for that. And you wonder, you  
14 know, is Magda Rahey telling the truth here. Did Ivy Demolena  
15 really in advance tell anybody about what she was going to do  
16 to James Polites? Does this crime look like it was planned out  
17 in advance, to use neck ties and electrical cord? Doe it sound  
18 like anybody was planning this in advance and planning it  
19 before they got there, where they were going to use neck ties  
20 and electrical cords to strangle somebody? I submit that  
21 that's incredible, that it's absolutely preposterous. This  
22 wasn't planned in advance because Ivy Demolena didn't tell  
23 anybody in advance about her scheme. She didn't tell anybody  
24 in advance about what she was going to do because it was in her  
25 mind. Jamie Farthing didn't have to kill James Polites, James

1 Polites didn't know her at all, didn't know her from a hole in  
2 the wall; she had never been up here. Ivy -- Jamie Farthing  
3 didn't date James Polites like Ivy Demolena did. The only  
4 person who had a motive here was Ivy Demolena, because Ivy  
5 Demolena knew that James Polites knew her real name. He didn't  
6 know Jamie Farthing and he didn't know anybody else. The one  
7 he knew was Ivy Demolena. And Ivy Demolena is the master mind  
8 to this, the one who put this together, the one who should be  
9 punished and punished severely.

10 You know, it's really not a pretty picture what  
11 happened here. And Jamie Farthing told Dr. Simring that she is  
12 sorry, that she is remorseful. But that's not going to make  
13 anything better and that's not going to bring James Polites  
14 back. And nothing that you do or I do or any of us do can make  
15 that go away. But I know want to hone in on the testimony of  
16 Dr. Kleinman and Dr. Apolito, Jessie Farthing, Paul Farthing,  
17 and Kathy Farthing, and Dr. Simring. And I want to discuss it  
18 in light of diminished mental capacity and in light of post-  
19 traumatic stress disorder and disassociative disorder.

20 Every doctor that testified, testified that Jamie is  
21 immature for her years. Dr. -- Dr. Apolito said she's more  
22 like a 14 year old. Dr. Simring comes in and says yeah, she --  
23 she's very immature for her years. He only saw her like about  
24 a month, a month and a half ago. He saw her I guess in  
25 September sometime, his report was written in October. You

1 know, she's 20 years old and -- and she's very, very immature  
2 for her years. And Dr. Simring -- and you heard him on -- last  
3 witness you heard on Thursday afternoon -- and he's very --  
4 he's very glib and he's very experienced as -- as a witness,  
5 he's testified in numerous cases, finds in essence the same  
6 facts that Dr. Apolito does and Dr. Kleinman does, but he  
7 interprets them differently. And Dr. Apolito, you know, says  
8 you know -- I mean Dr. Simring comes in and says you know,  
9 Jamie came in and she's very coquettish was his word, and kind  
10 of sexy and -- and words like that. And Dr. Kleinman and Dr.  
11 Apolito tell you that this kind of coquettishness, this  
12 precociousness, this sexiness is evidence of sexual abuse.  
13 It's evidence of sexual trauma. And it's a way of coping, it's  
14 a way of dealing with things. But the interesting thing is Dr.  
15 Simring finds that too.

16 And you heard the testimony of Kathy and Paul and you  
17 heard the testimony of Jessie on Thursday. And Dr. Simring  
18 comes in here after talking to the prosecutor and says well you  
19 know, it probably wasn't as bad as Jamie made it out to be, but  
20 it's probably worse than what Kathy and Paul and Jessie  
21 testified to. Well Dr. Simring didn't have the benefit of  
22 their testimony. And if things were probably worse than Kathy  
23 and Paul and Jessie testified, and I submit you've had the  
24 benefit of that testimony, things had to be pretty darn bad for  
25 Jamie Farthing growing up because what -- what have we learned.

1 We've learned that there's really no -- of stability in her  
2 life. We learned that her -- her mother Loopey and her father  
3 Paul married shortly before Jamie was born, they had two other  
4 kids before that, they fought constantly. Paul Farthing told  
5 you and you know, she stabbed me once and we used to fight and  
6 we used to throw things at each other, I used to throw dishes,  
7 we used to fight all the time, we used to separate a lot and  
8 then she'd come back, then we'd separate again, then she'd come  
9 back, we would separate again and we lived all over the place.  
10 I can't even keep track of California, Indiana, Georgia,  
11 Florida, you know, those of us who have stability in our lives,  
12 and I know many of you are parents and you all try to give love  
13 and stability and guidance to your children; and it wasn't  
14 there.

15 And what happens? Mr. Farthing at some point gets  
16 custody of Jamie. She doesn't see her mom for -- for long  
17 periods of time. One day her mother walks into her life and as  
18 Jessie said, you know, we're going to go for a bus ride to the  
19 zoo and -- and you know, days later they're in California,  
20 we're to California. And here, you know, you -- you've been  
21 with your father and maybe it wasn't perfect and all of a  
22 sudden you're with this woman. And there's been testimony that  
23 -- that Satanism and Cousin Arthur and I think Jamie told the  
24 social worker that she was molested at a young age by Cousin  
25 Arthur. And we're not sure if it was three and a half or four

1 and a half or five because nobody -- nobody that came in was  
2 really very sure of dates and times and things like that. But  
3 she was in California for six months and because her mother was  
4 hiding she -- she was living in different places and -- and not  
5 staying in one place. And one day her father Paul comes to the  
6 school yard without any warning, picks up the kids and returns  
7 them back -- and I forgot whether it was Georgia or Florida,  
8 but you heard a whole litany of places where they lives,  
9 different aunts and different girlfriends and -- and nobody  
10 really knows how many schools Jamie attended. And -- and what  
11 does this really have to do with anything? It's -- it's --  
12 because of what Dr. Apolito said and I know that some of you  
13 may have been put off by Dr. Apolito's accent, but you know  
14 he's -- he's a board certified forensic psychiatrist. He's  
15 been a psychiatrist since I think 1952. And he too teaches at  
16 UMDMJ and as Dr. Simring said, you know, reasonable  
17 psychiatrists can differ. And Dr. Apolito, despite his accent,  
18 I submit his testimony was clear, his testimony was cogent.  
19 And yet he -- he did take some -- and some offense at some  
20 things that Dr. Simring said in his report. And I submit he did  
21 that because he felt so strongly about his diagnosis of Jamie  
22 and the diagnosis of post-traumatic stress disorder and the  
23 effect that it had on her and the resultant disassociative  
24 state that she was in during the Hippman crime and the Polites  
25 crime. And what does he say? What does he tell you? He says



1 I've never seen a case as bad as Jamie's. I've never one  
2 person have to go or suffer through as many traumas as this  
3 girl has had to suffer. And what -- what has she had to  
4 suffer? She's had no stability in her -- in her family life,  
5 she's been tormented at a young age with her cousin Arthur.  
6 I'll tell you, you know her and Kathy -- you know, and she was  
7 -- during her testimony she was crying and she was pleading.  
8 She said well I grew up in a normal home and ever since Jamie  
9 came into this house and I married Paul we haven't had a normal  
10 home, it hasn't been normal, it's just been wrong. And -- and  
11 she talks about Jamie's fears -- you know, you couldn't even  
12 give this girl a doll. And you wonder why. You think it has  
13 something to do with -- with Cousin Arthur and -- and -- and at  
14 a young age taking her puppy and -- you know, probably, even at  
15 that young age there were a few things that Jamie could  
16 unconditionally love because you're shifted back and forth from  
17 place to place, from parent to parent, and you have this new  
18 puppy. And what does Cousin Arthur do? He puts the puppy on a  
19 clothes line, he puts it in a sack and blows the puppy's brains  
20 out. And -- and then there's talk of Satanism and dolls and  
21 you wonder why Jamie is the way she is. And you wonder and I  
22 think it becomes clear why she started abusing alcohol and  
23 drugs at a very early age. You didn't just have one thing  
24 here, you had many things.

25 You know, Dr. Kleinman in -- he gave you a list of 20



1 -- 23 different -- different factors and you know, I'm not --  
2 not going to go through all of them, but you know, there are  
3 just so many here. If you go through Dr. Kleinman's factors,  
4 you know, Loopey Anderson, Ms. Farthing's mother, remarried and  
5 said Paul Farthing pulled a gun on them twice and threatened to  
6 kill all of them. We do know that Paul Farthing did pull a gun  
7 on Loopey because he came in here and he told you, you know,  
8 one day she came around and she wasn't supposed to be around so  
9 I went with my trusty gun and -- and I pulled a gun on her and  
10 I was convicted of it. Ms. Farthing is traumatized -- Ms.  
11 Farthing is traumatized by being kidnapped father by Loopey.  
12 And he goes on and he repeats about Arthur and about the dirt  
13 road and you know, he also talks about the beatings. You know,  
14 and we all -- you know, have been led to discipline our  
15 children and I agree with that. But you heard the testimony,  
16 you know, and I think we all have to -- you know, when we  
17 discipline our children we have to reassure them that we love  
18 them when we discipline them. Did any of that happen here?  
19 What -- you know, what would you get paddled for? It was --  
20 Jessie described the paddle and Mr. Farthing described it and  
21 Kathy described it and you know, you get paddled for getting  
22 bad grades, you get paddled for not doing your chores, you get  
23 paddled for having a messy room, you get paddled for talking  
24 back, you get paddled for lies. I don't know that there's a  
25 single child around who at one time or another hasn't lied to

1 their parents. And I don't think there's a single child  
2 around, not excluding of course that don't have a messy room.  
3 And I don't think there's a single child that at one time or  
4 another hasn't maybe gotten a bad grade. But you know that's -  
5 - you know, maybe it was just the paddling, well that's okay.  
6 But if you have a paddling and you know, at one point Paul was  
7 asked, you know, Paul said, you know, Jamie and the kids were  
8 never the same when they got back from California. And  
9 somebody asked -- I don't know whether it was the prosecutor or  
10 myself -- well did you -- did you reassure Jamie and the other  
11 kids that you loved them. And he basically said yeah, I really  
12 didn't think I had to do that. And you know, Jamie really I  
13 guess in a sense never accepted Kathy or Kathy never accepted  
14 her, I really don't know what it was and I'm not casting blame,  
15 but that's just another factor in this whole potpourri, this  
16 whole mess that sounds like -- you know, almost sounds like it  
17 comes out of you know, if it wasn't real it would be a movie.  
18 It's just -- just incredible.

19 And you know, then to top all this off, you know,  
20 she's raped I guess one night, she has that trauma. And she's  
21 -- she's you know, she goes and lives with her aunt for a while  
22 and you know, there is this charge where supposedly she  
23 threatened a teacher and I think Jamie's version was you know,  
24 the teacher touched me and -- and with all the history of  
25 molestation I thought he was going to molest me and -- and I

1 over reacted. And then on Christmas Eve 1993, the middle of  
2 the holidays, her aunt deposits her on the doorstep back in --  
3 in Conyers, Georgia and deposits her back with Kathy and her  
4 father, and they're at wits end. And again, you know, Jamie's  
5 in a -- Jamie's been rejected another time, you know, because  
6 she had gone through all these residences, a number of  
7 girlfriends that her father lived with for a few months at a  
8 time. It's -- it's really a mess.

9           So what happens in -- in the spring of 1994? We come  
10 full circle. You know, Jamie is staying out perhaps too late  
11 at night and she's drinking some beers down at the lake and  
12 she's -- she's smoking -- she smoked a little marijuana down at  
13 the lake. And she hasn't graduated high school yet. You know,  
14 Dr. Simring says well you know, she doesn't have much of a work  
15 history. Well I don't know too many kids who just turned 18  
16 who've got a huge work history and -- and their resume is three  
17 pages long and -- and they can go in and you know, get a really  
18 good job because they don't have the skills. I mean she's not  
19 even a high school graduate at this point. What happens at  
20 that point? You know, Paul, without even consulting Kathy,  
21 says you've got to go. You can't live at this house anymore  
22 because you were -- you know, you're being a rebellious  
23 teenager, a rebellious kids. And not we're going to find you a  
24 place to stay or we're going to find you maybe, you know, a  
25 group home or a place with a relative. No, here's a car,

1 here's no money, you're on your own. And -- and we come -- we  
2 come full circle, ladies and gentlemen of the jury.

3           You know, post-traumatic stress disorder, it's --  
4 it's a disease that in the -- it's in the DSM-4, the -- the --  
5 that everybody alluded to. And Dr. Apolito and Dr. Kleinman  
6 said you know, when you don't have personality disorders, and I  
7 went through this with Dr. Simring, there's a part where they  
8 talk about diagnoses of personality disorders that says that  
9 you can't diagnose a personality disorder if the pattern is not  
10 better accounted for as a manifestation or consequence of  
11 another mental disorder. Now Dr. Kleinman comes in here and  
12 says, you know, I saw Jamie the first time and I saw her for a  
13 long period of time. And I really had -- really couldn't make  
14 a diagnosis. So I -- I called you, Mr. Weichsel, and I asked  
15 you to get a social worker in there to talk to her because a  
16 social worker can spend more time than I can because there's  
17 some real, real nagging doubts that they have here and -- and  
18 that I have. And I don't want to give you a report, I don't  
19 want to give you a diagnosis till -- till a social worker comes  
20 in. And Dr. Kleinman testifies about how the social worker  
21 spent the time with Jamie and for the first time in her life  
22 Jamie was able to open up and acknowledge a lot of the things  
23 that happened to her in the past. And she was able -- the  
24 social worker was able, because this is what social workers do,  
25 is they -- she goes to other family members and puts together

1 the pieces of Jamie Farthing like you put together a puzzle.  
2 And there was -- Billie Feinberg, the social worker, was able  
3 to -- to put together the pieces of the puzzle, the pieces of  
4 Jamie Farthing that we've heard about there in the trial  
5 through the testimony of the doctors and the testimony of her  
6 family members. And it was only after that and after real  
7 careful consideration and after reviewing psychological testing  
8 that he did, because one of the differences between a  
9 psychologist and a psychiatrist is they're both doctors but the  
10 psychologist is not a medical doctor, he's got a Ph.D., a  
11 doctor in psychology, is that psychologists administer tests  
12 and they interpret tests. And he -- and he gave Jamie a number  
13 of tests and one of them, the post-traumatic syndrome test that  
14 he gave her, indicated that she suffered from post-traumatic  
15 stress disorder. And then Billie Feinberg picked up the pieces  
16 and put it together. And it was only after then when he said  
17 you know, I don't want to -- you know, I want to go back and  
18 interview her again. So even after he got Billie Feinberg's  
19 report he went back a second time to interview her. And you  
20 know, he comes in and he says you know, not only did -- do I  
21 find that she suffers post-traumatic stress disorder but that  
22 she -- she goes into these disassociative states. And that in  
23 all degree of psychological possibility she was in a  
24 disassociative state at the time of the Polites and the Hippman  
25 offenses. And the post-traumatic stress disorder isn't because

1 she had a bad childhood. It's because, as Dr. Apolito said,  
2 there was so many things happening in her life that caused her  
3 to suffer the post-traumatic stress disorder and that caused  
4 her to disassociate that on a -- on a psychiatric or a  
5 psychological level she really couldn't act with knowledge or  
6 with purpose. And that's really what you're going to have to  
7 decide here. And that's really what you're going to have to  
8 wade through.

9 And the other thing is, let's -- you know, Dr.  
10 Simring again found the same set of facts. He didn't say you  
11 know, Jamie Farthing's personal history and family history was  
12 a lie. He didn't -- he didn't say that all, you know, because  
13 if that was the case he would have testified to that and he  
14 would have put it in his report. He said I find the same set  
15 of facts that Dr. Apolito does and Dr. Kleinman does and Billie  
16 Feinberg does, but I'm just going to interpret it differently.  
17 And I guess you know, reasonable people can interpret things  
18 differently. And obviously you're going to have to make your  
19 own decision. But you're going to have to make it in the  
20 context of the fact that Jamie Farthing even today, even now is  
21 presumed innocent. And the State has the burden of proving each  
22 and every element of each and every offense to the satisfaction  
23 of every one of you beyond a reasonable doubt. And when you go  
24 in the jury room, that umbrella, that presumption of innocence  
25 permeates and is part of you until you reach an ultimate

1 verdict in this case.

2           You know, I -- I've gone on for a long time and --  
3 and there are a lot more things that I could say to you. And -  
4 - and there are a lot more factors that I could go into, but  
5 you're all heard the testimony of the witnesses and I'm certain  
6 that you recollect the testimony probably better than I do.  
7 And when you go into that jury room, and this is my last  
8 opportunity to speak to you, and after I'm done Ms. Baglivi is  
9 going to have her closing argument and then -- and she's going  
10 to put on a show and tell show for you and prove the crimes all  
11 over again it looks like and show you all the evidence. But if  
12 there are things that come to your mind regarding Jamie  
13 Farthing and her role in -- in this or her lack of role in this  
14 -- and it's something I haven't mentioned. It's not because  
15 it's not important, it's because there's so much here that's  
16 happened to Jamie Farthing and happened in her life and -- and  
17 you're all aware of it and you've all heard the testimony. And  
18 I just -- I just can't go over it anymore.

19           And in summation I'm just going to implore you to  
20 look at everything very carefully and when you reach your  
21 decision think about an 18 year old who's functioning like a 14  
22 year old. And think about the post-traumatic stress disorder  
23 and think about the disassociation and think about how she was  
24 lured into this and think about Ivy Demolena and think about  
25 Jamie Farthing. Thank you.



## Colloquy

31

1 THE COURT: Thank you, Mr. Weichsel. Now, ladies and  
2 gentlemen, it's 10:30. I think you're ready to go into the  
3 prosecutor's summation now which will be another hour I assume.  
4 Why don't you take a break. You can go down to the third  
5 floor, get yourselves some coffee and come back in about ten  
6 minutes and then we'll begin, all right? Don't discuss the  
7 case amongst yourselves.

8 (PAUSE - THE JURY LEAVES THE COURTROOM)

9 THE COURT OFFICER: All quiet please until the judge  
10 leaves the bench; remain seated.

11 THE COURT: Ten minutes?

12 MS. BAGLIVI: Judge, I wanted to put something on the  
13 record?

14 THE COURT: Close the door? Yes?

15 MS. BAGLIVI: Judge, I have an objection to something  
16 Mr. Weichsel said during his summation when he was referring --  
17 it was about the middle of his summation -- when he was talking  
18 about Dr. Simring he said that Dr. Simring only interviewed  
19 this defendant recently, I believe he -- I think he said it was  
20 October and only wrote a report his past month, judge,  
21 inferring that maybe Dr. Simring didn't do his job or didn't  
22 take the time that was needed in this case. And, judge, that's  
23 not -- the timeframe is true, but the inference that Mr.  
24 Weichsel was giving was not true because what happened in this  
25 case, for a year and a half after Mr. Weichsel indicated there



## Colloquy

32

1 was gong to be a diminished capacity defense he was supposed to  
2 submit a report. Judge Moses set down the time limits for  
3 those reports to be submitted. Many, many time limits kept  
4 going by and Mr. Weichsel said you know, it's not my fault,  
5 judge which Judge Moses understood, it was the doctors. I had  
6 on numerous occasion asked Judge Moses if Dr. Simring would be  
7 allowed to start his examination and then obviously if he  
8 didn't use the diminished capacity we would not be able  
9 disseminate the report. And Judge Moses kept saying no, she  
10 didn't want to do that. And finally in July of this past year  
11 because the reports were so late in forthcoming from the  
12 defense she allowed Dr. Simring to start at -- I believe it was  
13 the end of July in fact she signed an order to that -- to that  
14 point. So the inference he makes -- I don't want to get into  
15 start arguing with the jury about what happened because there's  
16 been no testimony to that, but the point is, is that I am just  
17 asking you to tell this jury that you can't draw any  
18 inferences, that there are legal reasons why certain doctors  
19 can't do their examinations until certain points in time  
20 because, judge, Dr. Simring was only following Judge Moses'  
21 order and was not allowed to see this defendant until late  
22 summer and that's what happened here. So there's -- there  
23 should be no inference before this jury because it's really  
24 incorrect.

25 MR. WEICHSEL: Judge, I think it was in the context

1 that I said this was in the context that even at this late date  
2 Dr. Simring found that she was very immature. And I don't  
3 think I cast any aspersions or even intimated that -- that --  
4 that he didn't do a competent job because he didn't see her  
5 until the fall. I -- I think it was really in context of that.  
6 The other thing, judge, is I submitted Dr. Apolito's report in  
7 -- in -- in June, judge, and you know, what can I say, judge?  
8 I don't recall that -- that order.

9 THE COURT: Was there an order signed --

10 MS. BAGLIVI: Yes.

11 THE COURT: -- by Judge Moses?

12 MS. BAGLIVI: Yes, judge. Then it should be in -- in  
13 the court file?

14 MS. BAGLIVI: Yes, it should be.

15 MR. WEICHSEL: I wasn't even discussing that issue at  
16 all, judge, at that point in my summation. I was discussing  
17 the immaturity problem. And I wasn't trying to cast aspersions  
18 on Dr. Simring.

19 MS. BAGLIVI: But that's the way I took it, that's  
20 the way it came out, that --

21 MR. WEICHSEL: I don't think it did.

22 MS. BAGLIVI: -- you know, there was something wrong  
23 and as I said, I think Mr. Weichsel can agree, I kept asking  
24 Judge Moses if Dr. Simring could start and she wanted to hold  
25 off.

1 THE COURT: All right. That's the way you took it.

2 MS. BAGLIVI: No, I mean that was Judge Moses, that  
3 she wouldn't --

4 THE COURT: No, I'm saying that's the way you took  
5 his remark?

6 MS. BAGLIVI: Oh, yes.

7 THE COURT: Yeah; I didn't.

8 MR. WEICHSEL: I --

9 THE COURT: I didn't. I don't think he indicated to  
10 this jury that Dr. Simring wasn't doing his job or it was  
11 really as I saw it, it was within the context that his  
12 interview with Ms. Farthing was -- was relatively recent which  
13 would be -- he said September because the report is dated in  
14 October. And it was in that context that it's a recent  
15 interview. He comes to his -- he comes to his conclusions  
16 based upon a recent interview and even those conclusions. No  
17 way did I get the impression that Mr. Weichsel was saying to  
18 this jury that Simring didn't do his job. And I don't really  
19 find that it's necessary to bring that to your attention, no.  
20 I -- that inference was not drawn by me. It was drawn by you,  
21 but I didn't -- he says he didn't. I'm going to leave it that  
22 way, I'm not going to make comment on it. Okay? Ten minutes.

23 MR. WEICHSEL: Thanks, judge.

24 MS. BAGLIVI: John, do you know where that coin went?

25 (RECESS)

1 THE COURT: We're ready to proceed, counsel. Bring  
2 up the jury please?

3 (PAUSE - JURY ENTERS THE COURTROOM)

4 THE COURT: All right, you all ordered lunch? All  
5 right, what we're going to do is -- my plan now is when the  
6 State finishes it's summation we're going to break for lunch,  
7 you'll have a half hour break, and then I'll give you the  
8 charge, all right?

9 Ms. Baglivi, if you're ready?

10 MS. BAGLIVI: Thank you.

11 May it please the court, Mr. Weichsel, ladies and  
12 gentlemen of the jury, as I told you in my opening and Mr.  
13 Weichsel alluded to it in his summation, this case was about  
14 the American Dream. And made no doubts about it, that the  
15 American Dream as it pertains to this defendant was to rob and  
16 to kill so she could get money so she could live a good life.  
17 This case is about greed, the greed of this defendant put her  
18 in that chair today; not me, not the judge, nobody else. It's  
19 greed, pure and simple. This is not about Jamie Farthing's  
20 American Dream because she didn't have a stable home life. The  
21 one thing that is glaring and obvious here is that this  
22 defendant participated fully in all of these crimes, that she  
23 acted with purpose and knowledge.

24 Now Mr. Weichsel in his opening statement said that  
25 this defendant went back to Georgia because she finally

1 realized that she didn't like the company that she was keeping.  
2 And, ladies and gentlemen, that is simply not true. This  
3 defendant liked the good life. She liked the expensive hotels,  
4 she liked going out to dinner and movies in New York City. And  
5 when the money ran out Jamie Farthing went home; that's as  
6 clear as it can be. That even comes from the defendant's own  
7 statement. "We had run out of all the money that we had stolen  
8 because we stayed at expensive hotels and for food and  
9 everything, I went back to Georgia." No other reason why. It  
10 is not because she was under the spell and finally able to get  
11 out from Ivy Demolena; because the money ran out she went home.  
12 And the only thing we can glean from that, ladies and  
13 gentlemen, is the old saying that crime doesn't pay.

14 Mr. Polites had that American Dream, Mr. Hippman had  
15 that dream. And what happened because of the actions of this  
16 girl? Mr. Hippman had to get up here and testify and he had to  
17 sit here and tell you how he called a prostitution service. Do  
18 you think that was easy for him? He had to live through that  
19 nightmare again on the stand and he'll probably have to live  
20 with it for the rest of his life. That's not -- that was never  
21 supposed to be part of his American Dream.

22 And how about Mr. Polites? Mr. Polites was murdered  
23 in his own home, murdered with his own neckties, murdered with  
24 the own -- with his own electrical cord from his house. His  
25 life was ended. He didn't even get to reach to be 40 years old

1 today, left a shattered family. His American Dream ended that  
2 night because of this defendant and her cohorts. Think of the  
3 indignity this man suffered. Look at the way he died. He  
4 wasn't shot, he wasn't stabbed, he was strangled with his own  
5 neckties and hung with his own electrical cord. His American  
6 Dream is no more.

7           You have heard overwhelming evidence. You've heard  
8 from three confessions that this defendant gave to the police -  
9 - three. You heard from witnesses' testimony and I'm not going  
10 to go through all of those witnesses, but you heard from the  
11 witnesses at the Hippman house that night, the doorman, Mr.  
12 Hippman himself. You heard from the crime scene at the Polites  
13 home, you heard it from Thomas Delgado, the man where they went  
14 to pawn the jewelry, King Jewelers. You heard from Magda  
15 Rahey. You heard all of that evidence. You will also see  
16 boxes of physical evidence. You will see photographs of how  
17 Mr. Polites died. You will see exhibits. You will see hotel  
18 bills. You will see all of that; overwhelming evidence  
19 pointing to the guilt of this defendant.

20           And what do we hear from the defendant? The abuse  
21 excuse. That's what it's called, ladies and gentlemen, make no  
22 bones about it. We have heard nothing but excuses,  
23 justifications for this crime. The abuse, the excuse that  
24 doesn't appear until after this woman is charged with murder.  
25 All of this all of a sudden starts surfacing. Ladies and

1 gentlemen, I ask you, someone charged with murder, don't you  
2 think they have a very good reason to lie? This evidence of  
3 rapes, this evidence of trauma, none of this comes out until  
4 after she's charged with murder. The diagnosis of post-  
5 traumatic stress disorder -- not until she's charged with  
6 murder. All of this evidence -- the State have produced  
7 overwhelming evidence and we come up with the abuse excuse.  
8 She's not saying she wasn't there, she's not saying she didn't  
9 do it, but she says because she was abused as a child you  
10 should set her free and not find her guilty of any of these  
11 charges.

12 Well, ladies and gentlemen, the judge will tell you,  
13 and I'm not going to get into law with you, that's not my  
14 place, but just keep in mind he's going to tell you that the  
15 doctor's opinion is only as good as the evidence upon which  
16 they base those opinions. And, ladies and gentlemen, you recall  
17 how I crossed the doctors, on the facts. And you heard me say  
18 in my opening pay attention to the doctors, pay attention to  
19 all of the witnesses of course. But pay attention to the  
20 facts. The facts speak clearer than Dr. Apolito or Dr.  
21 Kleinman could ever speak when they told you about this psycho  
22 babble, and that's all it is, is psycho babble. Their opinion  
23 is based practically 99% on what this defendant told the  
24 doctors and told the cops. If you find what she told the  
25 doctors or the police was incorrect then you have to reassess



1 the opinions of the doctors' testimony. And you heard Dr.  
2 Apolito. I said well assume this were true instead of that,  
3 would that change your opinion? Possibly. I asked it again  
4 on another fact; maybe. Dr. Kleinman however, wouldn't give  
5 you an inch. He said nothing would change his opinion. Well,  
6 ladies and gentlemen, that's what you have to look at. That  
7 makes no sense. He bases it on what he believes the facts to  
8 be and if the facts are shown wrong he's not changing his  
9 opinion? At least Dr. Apolito said to you yes, that may change  
10 my opinion.

11 Now I just went through the statements and the  
12 doctors' reports and I just tagged a few areas. And again,  
13 it's your recollection that counts but remember all the  
14 inconsistencies you heard. And remember the most important  
15 fact of all; Jamie Farthing is a liar. How do I know that?  
16 Not just through the statements, but what she told Lieutenant  
17 Roger Kane when she got back to New Jersey. Hey, Lieutenant,  
18 can I speak to you? No, no, no, we spoke to you in Georgia,  
19 can't speak to you anymore. But, Lieutenant, I lied to the  
20 police, I know want to tell the truth. She is an admitted liar.  
21 She minimized her participation, she minimized her role in  
22 these statements. Why? Because she's facing murder charges.  
23 And what do you think she did when they doctors went to see  
24 her? She knew what they were there for. She knew that Simring  
25 was the State doctor and Apolito and Kleinman were the defense



1 doctors. So do you think she told them the absolute truth? Of  
2 course not. She shades things, she exaggerates things and she  
3 out and out lied to them.

4 In her statement -- this is the oral statement, and  
5 again, just a couple lies I'll point out. She tells  
6 Investigator Alver, "Farthing claimed that she agreed to go to  
7 New York because she had never been to New York and thought --  
8 thought it would be a nice vacation." You know what? Never  
9 mentions once in here about the plan or robberies, not once.  
10 It was going to be a vacation, lie number one.

11 Talking about what happened at Mr. Hippman's house --  
12 and you heard from Mr. Hippman and do you really think he is  
13 lying? The man had to stand up here and tell you about this  
14 escort service and to tell you that he called for this woman.  
15 Do you think it was easy for him to do that number one? And  
16 number two, do you think it was easy for him to relive that  
17 night again? She says Demolena and Hippman went out onto the  
18 balcony. Well that's the first truth because that is what Mr.  
19 Hippman said. "Then James walked to the gold bag which was  
20 left on the bar by Demolena and gave one of the guns to  
21 Demolena." Not true. What is she doing here? Trying to  
22 minimize and distance herself. "Demolena then gave the gun to  
23 Farthing and told her to point it at -- told her to tell  
24 Hippman that it was a stick-up. Farthing took the gun, pointed  
25 it at Hippman and told him to put his hands up and not move."

1 Again, that is not how it happened. Demolena is on the couch  
2 with Hippman, James was wandering around, this defendant picks  
3 up the first gun, points it, announces the holdup. Nobody  
4 hands her a gun, nobody tells her to do it; she did it on her  
5 own, another lie. She's asked, "Farthing was questioned about  
6 the silk ties that I located in the bedroom and she stated that  
7 she had purchased them at a flea market in Georgia." Again,  
8 another lie.

9 Talking about Polites homicide. "Polites -- Demolena  
10 threw down some neckties from the bedroom as well as a pillow  
11 case from the bed." Untrue. In her statement she says it was  
12 her. She says, "Demolena and James carried Polites upstairs."  
13 Untrue. And you know what's really kind of unique -- unique  
14 and different about the statement? She never mentions the  
15 juvenile, Beninio Rosario. There is not one mention in either  
16 of these recitations of these crimes that he was there. She  
17 was trying to protect the juvenile so she doesn't mention him.

18 And then she goes on with the oral statement and  
19 again, you know what else she doesn't tell them? She doesn't  
20 tell them that she went home at one point in time to drop off  
21 her loot and go back to New York; she fails to mention it.

22 Going through her transcribed statement the same  
23 thing. Now of course she says yes, there was a plan. "During  
24 July -- June and July did you have any conversations with them  
25 before coming to New York?" "Yes. Whenever -- whenever I went

1 over to their house with some friends of mine and we went out  
2 to the back shed and she told me like the whole plan." Totally  
3 inconsistent with her oral statement where she says I just went  
4 to New York for -- to see New York as a vacation.

5 Now however, in this statement she does mention that  
6 Ben and Tato were there. She mentions Tato in the oral  
7 statement, but now for the first time with this stenographic  
8 statement she mentions the presence of Ben at the Hippman home  
9 and at the Polites home. And she says, referring to Hippman,  
10 "Who else was there?" "Ben and Tato were waiting outside in  
11 the car."

12 Then she goes in -- into the Hippman facts. Now she  
13 says forget about going onto the balcony and then Demolena  
14 putting the gun in her hand, she says, "He," meaning Mr.  
15 Hippman, "started to get mad that Chris is there, he just  
16 wanted him to leave. So she asked if me and her could go into  
17 his room and talk for a minute, and he's like sure, go ahead."  
18 Number one, that never happened. Mr. Hippman never says they  
19 went in his bedroom, and number two, this is totally  
20 inconsistent with her statement to Investigator Alver. What  
21 does that tell you, ladies and gentlemen? It tells you that  
22 when you're lying it is too easy to get tripped up because you  
23 cant remember what you told somebody two days before. That old  
24 saying, oh what a tangled web we weave and if at first we try  
25 to deceive? That's what is happening to this defendant. She

1 is lying so consistently and constantly she cant' remember what  
2 she said.

3 Then she talks about, "Well did anything happen to  
4 him," meaning Hippman, "at this point?" "I think Ivy kicked  
5 him. He made a noise and she was talking to him like, you  
6 know, real harshly." Was there any testimony to that?  
7 Absolutely none. Was there any test -- was there any mention  
8 of that in the oral statement? Obviously none. Again, she is  
9 trying to minimize her participation and heap all of the blame  
10 on the other people.

11 And again, she talks about in the oral statement  
12 going to the hotels after the crimes. She says they went back  
13 to Maria Rios', it goes on and on and on. I've read both pages  
14 and I'm not going to bore you because I'm sure you remember her  
15 statement. But there is just so much inconsistencies here.

16 That was just in the two oral statements. Now don't  
17 forget, I cross examined the doctors with the statements of the  
18 co-defendants. Now the judge is going to tell you, that's not  
19 evidence. You can't use it and say well then that was her  
20 role. But my point is that the doctors ignored -- they had  
21 these other statements and they ignored it. This defendant  
22 tells the police that I was downstairs when Mr. Polites was  
23 being killed upstairs. Well I asked them did you consider the  
24 statement of Thomas Christopher James that places this  
25 defendant upstairs? Would that have any bearing on your

1 opinion? No, no, no, no, no. They took everything that this  
2 defendant said as the truth. They didn't want to believe  
3 anything else because it wouldn't fit with their diagnosis.  
4 They ignored all of the evidence. She lies to the doctors.  
5 She says, referring to Mr. Hippman, "When they ran into some  
6 difficulty with the victim she took Jamie into another room and  
7 put a gun in her hand which the frightened youngster agreed to  
8 handle. And only then she was told that it was not loaded. Mr.  
9 Hippman apparently read Jamie's frightened facial expression."  
10 That didn't happen. Mr. Hippman told you there was nothing  
11 wrong with Jamie Farthing. She pulled the gun, she announced  
12 the stick-up and things proceeded from there. There was no  
13 forcing a gun in her hand.

14 Then she says, "Jamie was next told to tape the  
15 victim's limbs, but she could not perform that simple task  
16 either." Where is there any evidence of that whatsoever? The  
17 testimony from Mr. Hippman and the statement that she gave to  
18 the police says Thomas Christopher James began to tape her --  
19 tape him up. Nobody ever asked Jamie Farthing to do that, but  
20 she's just trying to throw out these facts to make the doctors  
21 believe that she couldn't act, she was so scared, she was so  
22 frightened she couldn't do a simple task of tying somebody up  
23 or wrapping somebody up with duct tape.

24 Another lie to this doctor -- this is talking about  
25 the Polites homicide. "Once they were in the victim's house

1 and the latter had been immobilized," meaning Mr. Polites,  
2 "Jamie was directed to place a pillow case over his head which  
3 she did. She was then led on a robbery spree by Ms. Demolena."  
4 Again, absolutely not true. She says to the police I threw  
5 down the pillow case. And again, well you want to say well  
6 this really gets her more involved. Well my point to you is,  
7 ladies and gentlemen, there are so many lies she can't remember  
8 what she told them because all of this is one big lie.

9 She says, "Ms. Demolena only contacted Jamie,"  
10 meaning Jamie Farthing, "after she was arrested to warn her  
11 against any confession." Again, a lie. It was to warn her to  
12 lay low; we got arrested, you better get out of the area, lay  
13 low so you don't get caught. And, ladies and gentlemen, she's  
14 not going to say that because what does that tell you, that  
15 statement right there? This is a woman, Ivy Demolena, who  
16 tried to exploit Jamie Farthing, who tried to use her and abuse  
17 her? Ivy Demolena is looking out for the welfare of this woman  
18 and telling her we got caught, they're on their way, get out of  
19 the area. She's trying to protect her.

20 The other doctor again, full of lies. I'll just  
21 point out one or two. Talking about Mr. Hippman, "He said she  
22 was nice to Hippman, told him he wasn't going to get hurt, even  
23 showing him that the gun didn't work." Where is there any  
24 evidence of that? Not in the oral statements and not from Mr.  
25 Hippman. Again, an out and out lie trying to show you what a

1 nice person she was when she committed these horrible crimes.

2 She says, "She did not learn," -- this is talking  
3 about Mr. Polites -- "She did not learn that Mr. Polites had  
4 been killed until they were leaving." Again, ladies and  
5 gentlemen, an out and out lie because her own statement to the  
6 police says I overheard them talking about killing him. I  
7 overheard it when I was in the apartment before it happened.  
8 But now she tells the doctors oh no, I didn't learn it until we  
9 were ready to leave that house. Again, ladies and gentlemen,  
10 an out and out lie.

11 You know what's very interesting in all of these  
12 statements? There is no mention of excessive alcohol use and  
13 there is no mention of drugs. Ladies and gentlemen, right at  
14 the time she was interviewed by the police, right after these  
15 things happened, a day after she gets arrested, two days after  
16 she gets arrested -- she hasn't had time to think about the  
17 defense. She hasn't had time to think about alcohol and drug  
18 use as a defense, and they're not in the statement because they  
19 didn't happen and because she hadn't thought of that good  
20 excuse yet. Yes, there was some alcohol consumed at Mr.  
21 Hippman's. There was a half a bottle of wine between two  
22 people, that is it.

23 Mr. Mooney told you he was in a closed little area  
24 down by the front door in that little lobby and he was on top  
25 of all three of them. And he says I've seen people drunk



Summation - Ms. Baglivi

47

1 before. The man's a doorman, there's probably people in and  
2 out of that building all the time on the weekends, whatever,  
3 slightly inebriated. But Mr. Mooney tells you nothing was  
4 wrong with the three of them, no unusual demeanor, no  
5 characteristics of anyone being under the influence. And he  
6 also tells you on the way back down again, they even said good  
7 night to him. Nobody's stumbling, nobody's tripping, nobody's  
8 acting wild or weird; there is no evidence. Mr. Hippman says  
9 the same thing; a half a bottle of wine was consumed. The  
10 police looked in the garbage, there were no empties. They  
11 looked in the refrigerator, there were no open bottles. All  
12 the other bottles were sealed. The only bottle of alcohol was  
13 a half a bottle.

14 Mr. Polites' house; there were two empty Budweiser  
15 bottles in the garbage. And you heard the medical examiner.  
16 The medical examiner told you that there was some alcohol, a  
17 very small amount in Mr. Polites' stomach, it hadn't even  
18 reached his brain yet. And he says that is consistent with one  
19 or two beers. What do we have left? We have a bottle of Gold  
20 Schlager liqueur sitting on a counter and one glass somewhere  
21 in the house, I don't really recall where the glass was found,  
22 with some residue of this Gold Schlager. Ladies and  
23 gentlemen, I -- I don't have any problem with that. I would  
24 assume that after three or four hours of ransacking somebody's  
25 house you get a little thirsty. But again, there is no

1 excessive use of alcohol.

2           The issue of drugs. She does not say in these two  
3 statements that she was high, that she was into acid and this  
4 and that and LSD or whatever. It's again an excuse that comes  
5 much later in time. You would expect that someone who is such  
6 a heavy, heavy drug user as she claims to be, you'd find some  
7 drugs, you'd find some paraphernalia. They did a search on her  
8 apart -- on her room in Georgia. Did they find any drugs, even  
9 a minute amount? Did they find any paraphernalia --  
10 paraphernalia, things to smoke drugs with or things -- a bong,  
11 a pipe, a -- rolling papers? There is not one iota of evidence  
12 to suggest that she was on -- was high on drugs. You heard  
13 about the search of the luggage at Crossbay; nothing. You  
14 heard about the search of Maria Rios' apartment where she  
15 stayed. There is no evidence of drugs in this case. It is  
16 manufactured by this defendant to get out from underneath the  
17 charges here.

18           Now, you have the testimony of the doctors, what do  
19 they tell you? Well Dr. Kleinman would have you believe that  
20 anybody who's been abused as a child should escape  
21 responsibility for crimes no matter how horrible they are.  
22 Well thank God Dr. Apolito doesn't respond to that too, because  
23 then we might as well just go down to the street and open the  
24 jail of the Bergen County Jail and let people out, go down to  
25 the state prisons and let people out. That's not -- it's not a

1 valid psychiatric theory. I asked him, where do you get this  
2 theory from? What book, what can you show me that says this?  
3 And he couldn't do that.

4           They say she had post-traumatic stress disorder and  
5 because of that she couldn't act with purpose and knowledge.  
6 Ladies and gentlemen, use the examples that those two doctors  
7 gave you, you know, the Vietnam War veteran who's you know,  
8 walking down the street and all of a sudden he hears the car  
9 backfire and he gets startled and he turns around and starts  
10 shooting or hitting people; post-traumatic stress disorder. Or  
11 the young lady who raped and then when men come near her she  
12 shies away, she backs up. It is a reaction that is not  
13 planned, it is a startled reaction. But do you really think  
14 that that Vietnam Vet or that woman that had been raped cannot  
15 go through life forming purpose and knowledge? Absolutely not.  
16 One has nothing to do with the other.

17           She tells the -- excuse me -- they tell you she has a  
18 personality disorder and Dr. Simring agrees with that, she's  
19 maladjusted. Dr. Simring says what inmate in the Bergen County  
20 Jail and the state prison system isn't maladjusted, because  
21 yes, normal people don't go around committing crimes. And no  
22 one -- no one is saying that she's not -- that she's perfectly  
23 normal, she's maladjusted. She had some tough times in her  
24 life, well so have all of us.

25           Dr. Apolito, I asked him, and Dr. Kleinman too, well

1 let me ask you, you say couldn't form purpose and knowledge,  
2 well when she went into Mr. Hippman's home did she know she was  
3 pointing a gun at him? Yes. It wasn't a banana, I mean it  
4 wasn't a pencil; she knew it was a gun. Did she know that she  
5 was going to steal things, commit a robbery? Yes. Did she  
6 know the purpose to go there was to commit a crime and not to  
7 go and see a movie or withdraw money from a bank? She didn't  
8 think it was a bank, she knew it was an apartment. And think  
9 of those words -- knew, knowledge. Purpose or knowledge, the  
10 purpose in going to the house. She had a purpose, she had a  
11 purpose in coming to New York, to commit crimes. She was able  
12 to form purpose and knowledge, there is no doubt about it. At  
13 Mr. Polites' house did she know that they were going there to  
14 rob? Yes. Did she know that they were going there on the  
15 ruse of getting together with Mr. Polites? Yes. Did she know  
16 she was to steal things? Yes. She found money; she didn't  
17 say oh, this money has no relevance and just toss it back onto  
18 the bed. She took it because she knew that that's what they  
19 were there for.

20           These doctors make absolutely no sense. It is a  
21 desperate attempt to -- to grasp any psychiatric theory that  
22 might fit. They threw so much garbage out on this stand it's  
23 like if you throw enough stuff up on the wall maybe something  
24 will stick. And that's what happened here. They tell you that  
25 this defendant was abused. Where is the evidence of that

1 except out of the mouth of this defendant? And I have just  
2 shown you that she can't be trusted to tell the truth because  
3 she has a real problem with telling the truth. The only  
4 evidence you heard of some kind of a difficult childhood was  
5 from her family. And you heard the stepmother and the father  
6 and the brother testify.

7           Let's deal with the brother first, what did he tell  
8 you? Well he tells you about these two incidents when they got  
9 kidnapped out to California, when Jamie Farthing saw her dog  
10 get shot and when this Cousin Arthur took them out to the woods  
11 and dropped them off. And you sit here and you say to yourself  
12 well that's pretty bad, it's pretty bad. But then what a shock  
13 when you find out from the father that Jamie Farthing was just  
14 bearing three and a half years old when this happened. Think  
15 to yourselves, do you really remember back to when you were  
16 three and a half years old? Not many people do. Maybe it was  
17 upsetting at the time to her but she didn't understand what she  
18 was feeling, she didn't understand what was going on, she was  
19 three and a half.

20           The father tells you that yes, Loopey and I, the  
21 defendant's natural mother, had a stormy relationship. But  
22 what does he tell you? How old was Jamie Farthing? He says  
23 well I left California and I took the three children with me  
24 and I went back to Georgia. How old were they? They were two  
25 and a half -- well Jamie was two and a half years old. So

1 anything she may have witnessed between Loopey and Paul, she  
2 was less than two and a half years old. The father said well I  
3 don't know if they were there, they could have been in bed.  
4 Well where is a two and a half year old or a two year old  
5 normally when these fights are going on at night? In bed  
6 sleeping.

7           So you negate all of that and do you really think  
8 that they had such a horrible childhood? Jessie sat here and  
9 told you about 18 different places that he lived in. And I'm  
10 not saying that he's out and out lying, you could understand a  
11 brother trying to help his sister because she's facing a murder  
12 charge. So what does he do? He exaggerates, he adds things.  
13 Because when I finally add up all the years, by the time they  
14 met Kathy my God, he was like 12 and that's not when it  
15 happened. They met Kathy when they were -- when the -- Jessie  
16 was eight which would have made Jamie at six. So finally at  
17 age six she does have a stable influence.

18           Now do you really think that those parents were so  
19 abusive? Do you really believe any of that sexual abuse and  
20 everything else you heard? The only person you heard it from  
21 is through a doctor who got it second hand through the  
22 defendant who has a reason to lie, to make things up. Maybe  
23 they weren't the best parents in world but my God, which of us  
24 really are perfect parents? There's no such thing. They tried  
25 their best. He loved his daughter. He gave her a car, he

1 built a beach out in the back when he built his new house, he  
2 even put a little beach back there for his kids. This man  
3 tried his best and now she wants to blame those parents because  
4 she turned out the way she turned out? She's an adult.

5 Kathy said well I didn't -- it wasn't normal. Well,  
6 ladies and gentlemen, everybody has got their different  
7 versions of normal. Anyone that walked into my house when I  
8 was growing up would have said oh my God. We all talk a mile a  
9 minute, you can see I still do that. I mean normal is normal  
10 for what is for you. I mean it just -- there's no such thing  
11 as a normal household. Kathy Farthing says well she didn't  
12 want to dress the way I wanted her to, she wanted to wear  
13 makeup. Jessie says we had a curfew, midnight. My God, I wish  
14 I had that curfew. These are normal adolescent things.

15 The whole incident with the gun with Paul Farthing  
16 and Loopey. Number one, what bearing does it have on this  
17 defendant? She was not even present, she wasn't even there.  
18 And second of all it just shows that the love that this man had  
19 for his daughter that he went after his ex-wife to protect the  
20 daughter. So this is not such a horrible household. It had  
21 problems, yes it did, most houses do. She comes from a divorced  
22 background, so what? And Dr. Simring doesn't say that all of  
23 this abuse is a lie, he doesn't say that, but he doesn't say  
24 that it's true either. He says for purposes of my evaluation  
25 I'm going to assume it's true, but it has no bearing. He is



1 not rendering a credibility on this abuse issue, that is for  
2 you to decide. He's just saying I don't need it to come to my  
3 diagnosis.

4           What else did the doctors tell you? The real cracker  
5 here is minimal participation and only a few trinkets. Again,  
6 where did they get the minimal participation from? Well they  
7 get that from Jamie Farthing again because they refuse to  
8 consider the statements of the co-defendants or any other  
9 evidence presented; minimal participation. Well I don't think  
10 pulling out a gun on Robert Hippman and pointing it at him and  
11 announcing a stick-up is minimal participation.

12           As I told you in the beginning of my opening, there  
13 was a leader here and there were four followers. She is a  
14 follower just like the other three were, and Ivy Demolena  
15 planned it. Does that mean she is not responsible? Of course  
16 not. The judge will talk to you about accomplice liability.  
17 Well she didn't participate in the actual killing. Well,  
18 ladies and gentlemen, it only takes one person to wrap those  
19 neckties around Mr. Polites' neck and pull with extreme force  
20 for 30 seconds to three minutes. It doesn't take five people  
21 to do that, just like if they decided to shoot him it would  
22 take five people to pull the trigger, just like if they were  
23 going to stab him it wouldn't take five people to do that.  
24 That's why the law recognizes accomplice liability. It doesn't  
25 say just because you are the shooter or the stabber or the

1 strangler you're the only one responsible. No, it is the  
2 people who aided and abetted you in different ways; you're also  
3 guilty of the crime.

4           The doctors say well she got really nothing out of it  
5 of value. Well again, ladies and gentlemen, let me use the  
6 example of a bank robber and let's get away from this for a  
7 moment. Assume you went into the bank, your purpose was to go  
8 in there and rob it, you shot the guard dead, you grab the bank  
9 bag and you run out. You get home and you open up the bag and  
10 its empty. Does that mean you are not responsible for killing  
11 that guard because you got no proceeds? That's not the way the  
12 law works here. What did she get? Okay, she got some ties,  
13 she got the glass balls. Ivy Demolena and Thomas Christopher  
14 James got everything; they got the cash, they got everything.  
15 Remember what was taken at the Crossbay in their luggage. What  
16 items of value did they get? Anything of value taken from the  
17 Polites or the Hippman crimes were hocked, were hocked to pay  
18 the expensive hotel bills. Now it doesn't matter who checked  
19 in, the point is all five of them benefitted from those hotels.

20           Looking first at the first hotel, you can just put  
21 them in chronological order yourself. They were spending money  
22 -- a room, \$349, room tax \$28, city tax, \$20, New York  
23 occupancy tax, \$2; \$349 without tax. That's where the money  
24 went. Ivy Demolena and Thomas Christopher James, what did they  
25 get? They got a Jets jacket, they got a Mets jacket, they got

1 a clock, they got nothing of real value because anything worth  
2 any money, the jewelry, the Super Bowl ring was pawned at King  
3 Jewelers or Modell's and they got cash. And this defendant got  
4 the benefit of that cash. Her hotel rooms, her meals, shopping  
5 spreeds all paid for. That's just the Marriott Financial Center  
6 bill.

7           Then you've got the Ritz Carlton which is the next  
8 night. How much is that room, ladies and gentlemen? That room  
9 is \$850 a night, not including \$70 for tax, \$42 for state tax,  
10 \$51 for city tax, \$2 for room tax. You've got pizza delivery,  
11 \$36, you've got pizza, \$15, you got gift shops. That is where  
12 the money went. That is where all the good trinkets, the  
13 expensive trinkets, the good jewelry went. It was pawned to  
14 pay for her high style of living which she enjoyed immensely.  
15 And why do I say she enjoyed it immensely? Ladies and  
16 gentlemen, I'm just going to show you some pictures. You're  
17 going to have all of the pictures with you in the jury room,  
18 but just take a look at these pictures. You heard the  
19 testimony that these hotels were identified, it was the various  
20 hotels they stayed in. Jamie Farthing on the left next to -- I  
21 believe Investigator Kelaher told you that was Beninio Rosario  
22 dressed in drag. All dressed up on a night out on the town,  
23 wouldn't you say? Does it look like she's being held there  
24 against her will, that she's being subject to psychological --  
25 psychological prison? She's decked out in makeup, dressed, and

1 she's smiling, ladies and gentlemen. And, ladies and  
2 gentlemen, these pictures, these hotel stays are all after the  
3 murder was committed. Here's another one, ladies and  
4 gentlemen; she's posing in the room in one of those wigs with  
5 that impish little grin on her face. Again, is she a  
6 psychological prisoner? Is she there against her will? She's  
7 having a grand old time. Again, there she is out on the street  
8 corner smiling, happy. There she is posing in that wig with  
9 Ivy Demolena again smiling, happy. They're posing with -- it  
10 looks like some kind of a statue of a bird in the hotel room.  
11 They're having a grand old time. Does she look like she's  
12 under the spell of Ivy Demolena? Does she look like anybody's  
13 holding her there against her will? Another picture of Jamie  
14 Farthing enjoying the benefits of the motorcycle. And yes,  
15 there was some testimony a motorcycle was put in Thomas  
16 Christopher James' name. Well, ladies and gentlemen, how are  
17 they going to register a motorcycle under five people's names?  
18 But they all got the benefit of it. You heard from Thomas  
19 Delgado when Jamie Farthing showed up at the jewelry store the  
20 third time she came riding in on that motorcycle. Pictures  
21 speak a thousand words, so much more than Dr. Apolito or Dr.  
22 Kleinman could ever tell you.

23 More hotel bills. The Marriott Marquis, a different  
24 Marriott. Again, we're talking about \$194 hotel room with the  
25 tax, with everything else, with movie rentals, with gift shops;

1 everything else. And unfortunately these are not blown up but  
2 again, you'll see the Marriott hotel bills again. This room is  
3 a little cheaper, it's only \$149 a night and they stayed there  
4 for quite some time. And again, this defendant enjoyed the  
5 benefits of this hotel. And there was some testimony about the  
6 Iroquois but there are no records. You heard them, they were  
7 there. And then the Crossbay Motel. And you know what's  
8 really funny, ladies and gentlemen? If you sit here and look  
9 at all these bills you can see the progression as the money  
10 runs out, as they start out with expensive hotels, \$850, \$350,  
11 then they're down to \$195, then they're down to \$150; the  
12 motels get cheaper because the money runs out. And when the  
13 money runs out she goes home.

14 Dr. Simring testifies. His credentials I would  
15 submit to you are pretty impressive. The man runs the  
16 curriculum at the University of Medicine -- Medicine and  
17 Dentistry for the State of New Jersey, where Apolito once in a  
18 while talks, lectures, teaches. He has written books, Dr.  
19 Simring. He's written articles, a medical textbook for third  
20 year medical students he told you. He also told you, which is  
21 something very interesting, he writes his reports as he sees  
22 them, not based on who is paying him. When Mr. Weichsel asked  
23 him some questions about who do you testify for more or less or  
24 whatever, prosecution, state defense, he told you that he  
25 writes the report for the prosecutions hire him, he examines

1 the defendant, he writes the report. And he told you, there  
2 may be points in time when we may not like his opinion but  
3 unfortunately that's the law and we're stuck with it. He  
4 doesn't write his reports based on who's paying him. And the  
5 same thing with the defense, and he told you this, that when  
6 the defense hires him if they don't like his report and if it  
7 doesn't jive with their theory of the case they can just push  
8 it aside and go on and hire another doctor and another one and  
9 another one. So again, he doesn't write what the person hiring  
10 him wants him to say. He does what he thinks is right. And he  
11 told you, she has a personality disorder. He finds no evidence  
12 of post-traumatic stress disorder. And he says even if I  
13 believe all of this abuse happened it does not affect my  
14 opinion. This woman was not suffering from mental disease or a  
15 defect and I'll quote right from his report which he read to  
16 you.

17 "It is my opinion to a reasonable degree of medical  
18 probability that Jamie Farthing does not suffer from a  
19 psychotic mental illness. She was in touch with reality at all  
20 times during the commission of the alleged crimes. Moreover,  
21 she understood the nature and the quality of her actions, she  
22 knew her acts were wrong. She was capable at all times of  
23 acting with purpose and knowledge."

24 It can't be any clearer than that. And then he goes  
25 on to point out in all the different ways he finds that the

## Summation - Ms. Baglivi

60

1 letter -- that this defendant acted with purpose and knowledge.  
2 And he says yes, she presents as an immature person, but I  
3 believe it was Dr. Kleinman that I finally got him to admit  
4 because one point he conceded, that immature people, people at  
5 age 14 can and do commit crimes all the time. That's why we  
6 have a juvenile justice system. Immaturity has nothing to do  
7 with purpose or knowledge. People that are 14 can purpose,  
8 they can form knowledge. Immaturity has nothing to do with it.  
9 Simring says yes, she was immature. And Kleinman even agrees  
10 immature people can commit crimes. So whether she was immature  
11 or not, ladies and gentlemen, put that out of your minds. But  
12 all the doctors agree, immaturity has nothing to do with  
13 purpose and knowledge.

14 Simring tells you she can act with purpose and  
15 knowledge. And where do we get that? What is the evidence  
16 here that backs it all up? Well I'm not going to go through it  
17 all again, but it is the facts, it is the testimony of Edward  
18 Kummer, the testimony of Magda Rahey. Just go through your  
19 minds. What -- what did Eddie Kummer say? Now again, yes, the  
20 State called him. Do you think he was an easy witness? You  
21 saw the trouble that I had getting him to answer my questions;  
22 he didn't want to be here. This was his girlfriend, he didn't  
23 want to be testifying against her, but he had no choice. He had  
24 given a statement a long time ago, he was stuck. Now the same  
25 thing with Magda Rahey. Do you think she was an easy witness



## Summation - Ms. Baglivi

61

1 to deal with? You heard me -- 16 times I had to show her her  
2 statement. She wasn't going to tell me anything, but again,  
3 she gave a statement and she stuck with it.

4 Eddie Kummer tells us, and he's the only one that  
5 told us, that Jamie Farthing went back home to Georgia sometime  
6 in early September to drop off her loot and went back. We  
7 would never have known that. And why is that important, ladies  
8 and gentlemen? It is the crux of the whole case here. If she  
9 were under the spell of Ivy Demolena and was being held there  
10 and she wanted to get out she had the perfect opportunity, she  
11 went back down to Georgia. Eddie Kummer tried to talk her out  
12 of coming back, her mother Loopey tried to talk her out of  
13 coming back. All of these people tried, and what was her  
14 response? Nope, I've got to go back because I've got to get  
15 more stuff. That's what this case boils down to. She makes  
16 the -- a -- Ivy Demolena makes the first call to Kummer and  
17 Kummer says I spoke to her and then I spoke to Jamie Farthing.  
18 What does Jamie Farthing tell you during that first  
19 conversation? She's having a good time, she's staying in  
20 expensive motels. Well, ladies and gentlemen, remember when  
21 they stayed in expensive motels -- after the crimes. She has  
22 already participated in a murder and she doesn't say Eddie, get  
23 me out of here, I can't believe what these people did. She  
24 says I'm having a good time. There was nothing wrong with her  
25 thinking abilities. So she participated in a murder, so she

1 participated in a robbery; she was staying at nice hotels and  
2 enjoying the fruits of her labor and she didn't want to leave.

3 Kummer tells you that they do in fact -- he comes up  
4 at one point in time. They go on picnics, they go to movies,  
5 they do all kinds of things and Thomas Christopher James is  
6 picking up the tab. And finally he realizes something is  
7 bothering her. I mean she is not a killer for hire with no  
8 conscious. She probably had a little inkling that you know,  
9 maybe this wasn't the best thing to do and he notices that as  
10 boyfriends, husbands or wives often do notice that in us  
11 because they're the closest to us. And he pushes her on it and  
12 says what's -- what's going on here. He saw all these things  
13 in the room; the camcorders, the money, the guns. He knew  
14 there was something not right here. And she tells him we were  
15 acting as call girls and we went into rob people. She says but  
16 that's not the worst thing, the worst thing is Thomas  
17 Christopher James killed someone. Well Eddie is shocked, he  
18 goes back to the hotel, he confronts them and they readily  
19 admit it. He asks this defendant why, as any one of us would  
20 ask, why would you commit this crime of murder? Why would you  
21 commit these armed robberies, why? What sense did it make?  
22 And you know what her response was? It was an easy way to get  
23 things; greed. Greed is behind all of her actions. She says  
24 it was an easy way to get things and I needed the money. And  
25 then, most importantly, she tries to justify and she says I

1 didn't think it would go that far. Ladies and gentlemen, the  
2 key word here is think; purpose and knowledge -- I didn't think  
3 it would go that far, which indicates to you, ladies and  
4 gentlemen, that she knew what was going on when they committed  
5 the robbery but she's trying to justify the murder -- I didn't  
6 think they would kill them, which means her thinking, her  
7 cognitive abilities were perfectly fine the night of the crime.  
8 She was able to form purpose and knowledge. He goes home, he  
9 gets out of there. He gets a phone call some time later from  
10 Ivy Demolena who says we got caught, tell Jamie to lay low.  
11 Kummer relates that message to Farthing and what is her first  
12 reaction? Maybe I'll go to Florida. Ladies and gentlemen,  
13 flight. The judge will instruct you as to flight. Why would  
14 she run off to Florida? Because she knew what she had done was  
15 wrong. She knew it was against the law to commit these crimes,  
16 she knew she committed a robbery, she knew she committed a  
17 kidnapping, she knew she committed a murder. So she leaves.  
18 If you believe the doctors, that she didn't know what was going  
19 on, that she couldn't act with purpose and knowledge, why all  
20 of a sudden when she finds out that Ivy Demolena and Thomas  
21 Christopher James are arrested is her first thought of flight,  
22 of leaving the area, getting out of there. And in fact what  
23 does she do? Thank God the police are fast and thank God Alver  
24 went right down to Georgia that day. They set up the  
25 surveillance -- I'm sorry, I'm getting a sore throat -- they

1 set up the surveillance and what do they see? Her packing her  
2 bags, throwing them into the pick-up and her mother and father  
3 driving away with her to get her out of the area because they  
4 knew the cops were coming and in fact they were there. That  
5 testimony I think, ladies and gentlemen, is most damning  
6 against Jamie Farthing, the fact that she came back down to  
7 Georgia. She could have stayed. Ivy Demolena was thousands of  
8 miles away. Thomas Christopher James, she was home, she could  
9 have stayed. But she chose to go back. She made a conscious  
10 decision in her mind to go back to New York to continue what  
11 they were doing, to continue to live high off the hog, to enjoy  
12 the fruits of her labor, to partake in the expensive hotels and  
13 the shopping sprees. And you heard Kummer -- when -- when she  
14 gets back down to Georgia he says where did you get all those  
15 things from? Well we went on shopping sprees and Thomas  
16 Christopher James gave me money so that I could shop. She liked  
17 this life.

18 Again, all of the statements, even the statements  
19 that she gave to the doctor point out that she could act with  
20 purpose and knowledge. And I -- again, I marked off -- this  
21 doesn't say pork, this is my thing, purpose of knowledge, P or  
22 K. And I pointed out all the places where she talked about  
23 purpose or knowledge, that she knew what was going on and that  
24 she had a purpose to rob. They had a list of people, she had a  
25 list of people referring to Ivy Demolena that they were

1 definitely going to do. And then she had like people that we  
2 were possibly doing. Do you know how many there were in total?  
3 I'm not really sure, but half of them we couldn't find the  
4 number to or they never called her back or something. She  
5 knows full -- full well what was going on up in New York.

6 "When you came up here", meaning up to New York, "did  
7 you bring any weapons with you?" "Yes, Chris has brought his  
8 grandmother's gun up here." Again, she knew they were armed  
9 with guns hitchhiking their way to New York to commit these  
10 robberies.

11 (PAUSE)

12 I'm talking about at Hippman's house again going  
13 through who had the guns. They were in the gold bag, discussing  
14 the fact that they went to this house armed with guns, showing  
15 purpose and knowledge.

16 "He poured us both a glass of Pino Grigio, I think  
17 that's what you call it, and then we started talking for a  
18 while."

19 "Did he ask your name?"

20 "Yes."

21 "What name did you give him?"

22 "I told him my name was Alexis."

23 "And did you tell him where you were from?"

24 "I told him I was from Florida."

25 She went along with the plan to a tee; up from

## Summation - Ms. Baglivi

66

1 Florida with my girlfriend. And you know, the doctors say oh,  
2 well she was given a new identify. Ladies and gentlemen,  
3 aliases, did you ever hear of that? Give somebody an alias,  
4 you don't want to use your real names? Because no, they had no  
5 intentions of killing Mr. Hippman, so they don't -- Mr. Hippman  
6 only knew Ivy as Erica so they felt safe they wouldn't get  
7 caught. They don't use their real names. That is not a new  
8 identity, it is an alias used for that night. But she went  
9 along with it. She had no problem following the instructions.

10 She says not to call each other by our real names.  
11 She says that in her statement and again, she knew exactly why  
12 not to, so that they wouldn't get caught.

13 "I assured him nothing was going to happen to him."

14 "Was he afraid?"

15 "Must have been, I mean I would have been."

16 Ladies and gentlemen, she knows full well she's  
17 committing a robbery and she's telling you well if I were  
18 Robert I'd be afraid. So again, purpose and knowledge. These  
19 doctors told you that they couldn't -- she couldn't form  
20 purpose and knowledge? It's in here, it's in these statements.

21 "I put socks on my hands." Why? If she didn't know  
22 what she was doing wrong would she put socks on her hands? The  
23 only reason she put socks on her hands is so she doesn't leave  
24 finger prints. And she does that at Mr. Hippman's house also.

25 "Did you take a lot of stuff from his house?" Mr.

1 Hippman's.

2 "We had just one bag full, I'm not sure exactly what  
3 was in it."

4 "Did anyone discuss what went wrong, what you could  
5 have done better?"

6 "They said we need to cut down on the time."

7 Again, ladies and gentlemen, very important; we've  
8 got to get in and out quick. They spent three to four hours in  
9 Mr. Hippman's house, too much time for things to go wrong. So  
10 she knew the significance of this, get in and out quick.

11 Talking about Mr. Polites -- "We called him at a bar  
12 I think."

13 "You called him at a bar?"

14 "Yes."

15 "And you spoke to him?"

16 "Yes."

17 She went along with this plan, she spoke to him on  
18 the phone. Nobody was holding a gun to your head and she  
19 obviously didn't blow it. She didn't say Mr. Polites, don't go  
20 to your apartment, you're going to be killed, you're going to  
21 be robbed, you're going to be kidnapped. She went along with  
22 this plan.

23 "Did anyone have a gun with them that evening?"  
24 referring to Mr. Polites.

25 "Yes, Ben had his gun with him and Chris had his gun



## Summation - Ms. Baglivi

68

1 with him." And she knew they were guns, she didn't think their  
2 bags were packed with bananas -- purpose and knowledge.

3 "We all started looking and he yelled to bring down  
4 some ties. We all started looking." What was she looking for?  
5 Things to steal, things to commit a robbery.

6 "We all went upstairs and we put socks on our hands."  
7 Leave no finger prints.

8 "She," meaning Ivy, "said he would have a lot of  
9 money in his house so we were pretty much looking for money and  
10 jewelry."

11 She wasn't looking for vegetables in his refrigerator  
12 or newspaper; she was looking for money and jewelry, purpose  
13 and knowledge to commit a robbery.

14 Then she talks about when she went upstairs and saw  
15 Mr. Polites hanging. "I just walked in, I saw blood on the  
16 pillow case."

17 "And what did you think?" I'm sorry, "What did you  
18 think?"

19 "I just thought they killed him."

20 "Did you ask what happened?"

21 "No, I went back downstairs," and then she continues  
22 on in her statement that she packed up the things.

23 Ladies and gentlemen, don't you think if you had no  
24 idea what was going on in that apartment that you might stand  
25 there and say my God, what did you do to this man? I didn't

1 know we were going to -- we were being involved in murder.  
2 Don't you think if you came across your friends and your  
3 accomplices involved in this you would have questioned them?  
4 But that's not what she does at all. Nope; no, I want back  
5 downstairs and I continued packing up.

6 "Was there ever any talk about never speaking about  
7 what had happened?"

8 "No, it was pretty much unspoken, we knew not to say  
9 anything." We knew not to say anything. This is a woman who  
10 couldn't act with purpose and knowledge, did not know what was  
11 going on, yet she knew not to speak about it. Why? Because  
12 she knew what she and the others had done was wrong and it was  
13 unspoken. Nobody had to say don't talk about it, we could get  
14 in trouble, because she knew.

15 And, ladies and gentlemen, there's so many more of  
16 those. Just remember, recollect what the testimony was  
17 regarding her statement, regarding both her oral and her  
18 stenographic statement because it's all there.

19 Ladies and gentlemen, I think when you put all of  
20 this evidence together there is only one conclusion that you  
21 can come to; that this defendant acted with purpose and  
22 knowledge. She tell the doctors -- dealing with the Hippman  
23 crimes first. Armed robbery. Well, ladies and gentlemen, she  
24 had a gun. Even if she didn't have the gun in her hands the  
25 judge will talk to you about constructive possession. The

1 other person had the gun in her hand, if she participated, if  
2 she had the same mental state as the others she's guilty  
3 whether or not she had the gun in her hand. But we have heard  
4 that she had the gun in her hand. She is guilty; armed  
5 robbery; in the course of committing a theft did use force upon  
6 and was armed with a deadly weapon.

7 Theft? No doubt about it. Things that were taken?  
8 Well maybe nothing of value but things were taken.

9 Used force? Most definitely; he was tied up.

10 Armed with a deadly weapon? Most definitely; Jamie  
11 Farthing had one of the guns.

12 Kidnapping; we all think of kidnapping as taking  
13 someone and removing them from another location. Well the  
14 judge will tell you that's one kind of kidnapping but there's  
15 also another kind of kidnapping. And that talks about unlawful  
16 confinement. Was he unlawfully confined? Yes. He wasn't just  
17 left there sitting on his couch when they left. They duct  
18 taped him up to a chair and luckily for him, even though the  
19 phone lines were cut and it was late at night, within 20  
20 minutes he was able to get loose. But she's guilty of  
21 kidnapping by unlawful confinement of Mr. Hippman.

22 Possession of the weapons. Again, ladies and  
23 gentlemen, constructive possession. She doesn't have to have  
24 them in her hands, but they were present there at the scene and  
25 she knew about them.

1           There was no testimony of a permit, she had no permit  
2 to carry. They possessed those guns for unlawful purpose to  
3 terrorize, to rob Mr. Hippman.

4           The Polites crimes. Same crimes only there's an  
5 added crime here of murder. And again, the kidnapping with the  
6 unlawful confinement, the weapons, the robbery. Again, she  
7 didn't have the gun. There's no evidence here that she  
8 actually possessed the gun at Mr. Polites' home that night  
9 however, she knew that the guns were present. She knew that  
10 Junior and Thomas Christopher James had them; constructive  
11 possession. She was in possession of those guns constructively.

12           Murder. What makes the defendant guilty of murder?  
13 The judge will tell you about accomplice liability. And as I  
14 said to you in my opening statement, I'm not alleging that she  
15 was the one that pulled those ties. I don't -- around Mr.  
16 Polites's neck and used that extreme pressure for 30 seconds to  
17 three minutes. I don't think we'll ever know what really  
18 happened up in that room. But Mr. Polites was alive when they  
19 got there and when the five of them left Mr. Polites was dead.  
20 It was not a suicide the medical examiner told you, it was  
21 murder. So only one of those five people, or two of those five  
22 people, had actually committed the murder. If she didn't  
23 commit the murder is she responsible? Most definitely yes. If  
24 she had the same mental state as the others, if she knew about  
25 the plan ahead of time. If the murder happened and she only

## Summation - Ms. Baglivi

72

1 finds about it later then no, she's not guilty of murder. But  
2 why do I say she knew about the crime ahead of time? There's  
3 numerous factors for you to consider. Number one, the phone  
4 call from Magda Rahey -- from Ivy Demolena to Magda Rahey,  
5 calling from a pay phone collect to Magda. Magda is talking to  
6 her sister on the phone. She says -- Ivy Demolena says we've  
7 got to stop off in Jersey to take care of someone. And she  
8 kept pushing and pushing and pushing, what do you mean take  
9 care of someone? And finally Ivy Demolena says we have to kill  
10 someone, a guy by the name of Jamie. So heading up from  
11 Georgia while they're hitchhiking Ivy Demolena already knows  
12 that the crime of murder is going to take place. Well how does  
13 that affect Jamie Farthing? Well remember also what Magda Rahey  
14 told you, that Ivy Demolena told her that Jamie Farthing and  
15 Thomas Christopher James were with her, they were all  
16 travelling together, just the three of them alone, no other  
17 people involved. Magda Rahey also tells you that while she --  
18 Ivy Demolena is telling her about the plan to kill this man  
19 named Jamie in New Jersey she hears a male and a female in the  
20 background and the female has a heavy southern accent. Jamie  
21 Farthing and Thomas Christopher James were present at Ivy  
22 Demolena's elbow while she's making the call and talking about  
23 the murder.

24 Another factor for you to consider; the defendant  
25 tells you in her statements that she overheard in the house, in

1 Mr. Polites's house, the discussion about murder, that we have  
2 to kill him. This is before the murder ever takes place. She  
3 says it at least two or three times in her statement. And,  
4 ladies and gentlemen, what does she do to become an accomplice  
5 to that? Does she have a duty to stop them? No, she does  
6 not, but she continues on with her packing up. She continues on  
7 grabbing her things. She says she's downstairs and everybody  
8 else is upstairs. Well, ladies and gentlemen, there's a little  
9 -- a little problem with that, and you -- you don't even have  
10 to believe that statement that she was downstairs when she  
11 overheard. She'd like you to believe -- if you remember her  
12 statement, when she says everyone is downstairs she's upstairs  
13 and then coincidentally when everybody comes upstairs with Mr.  
14 Polites she goes downstairs. I suggest to you that that's  
15 just minimization on her part. She says she overheard them  
16 talking about the murder. Ladies and gentlemen, she wants you  
17 to believe she's downstairs searching the kitchen or the living  
18 room and she hears them up stairs in another bedroom talking  
19 about murder? She overheard them all right, but not because  
20 she was downstairs, she was upstairs.

21 But what does she do to become an accomplice? She  
22 doesn't walk out the door. She doesn't walk out of the  
23 apartment, go up onto River Road, a major street, and try to  
24 flag somebody down. What does she do? She doesn't stand there  
25 and say I'm not doing anything anymore, I refuse to participate

1 in this scheme. No, she continues now, quickly I believe she  
2 said, packing up the belongings in the bag because she knows  
3 they're going to have to make a quick getaway. She is aiding  
4 and abetting the murders so they don't get caught. She's  
5 packing up all of the goodies that they stole.

6 And, ladies and gentlemen, there's one third factor,  
7 the most important factor for you to consider when you  
8 determine whether or not this defendant was an accomplice to  
9 murder. You remember in Mr. Hippman's case she told the police  
10 that she took duct -- they took duct tape with them. They  
11 bought the duct tape in Georgia, they brought it to Mr.  
12 Hippman's house. And Mr. Hippman is tied up with duct tape.  
13 Not neckties because, ladies and gentlemen, neckties are not  
14 going to hold very long. They used duct tape. The purpose of  
15 using duct tape is to hold Mr. Hippman, to keep him confined  
16 for as long as possible so that they can make their getaway;  
17 duct tape, not neckties. Where was the duct tape at Mr.  
18 Polites's house? Ladies and gentlemen, it was there because  
19 there was no reason to tie up Mr. Polites so they could make  
20 their getaway. Why? Because going into the Polites home they  
21 knew, all of them, that Mr. Polites was going to be killed.  
22 There was no reason to bring duct tape. They would use the  
23 ties, they would hold for little while. But Jamie Farthing  
24 says there was duct tape at Hippman's. There was no duct tape  
25 at Polites', and you saw from the diagrams and the pictures



1 that there was no duct tape found, they don't bring it. Jamie  
2 Farthing knows it and she knows there's no reason for duct tape  
3 because he doesn't have to be immobilized for any period of  
4 time because when they leave that apartment Jamie Farthing  
5 knows that James Polites will be dead.

6           These are all factors for you to consider. Now,  
7 ladies and gentlemen, Mr. Weichsel mentioned something about  
8 felony murder also. He read to you while it's an affirmative  
9 defense if A, B, C and D -- ladies and gentlemen, he left out  
10 the most important thing. The judge is again going to tell you  
11 what felony murder is and I'm not going to get into it with  
12 you. Basically -- and again, I'm paraphrasing -- you listen to  
13 what the judge says about the law -- that if the person in the  
14 course of committing a felony such as robbery, such as  
15 kidnapping, if that person is committing a crime which, ladies  
16 and gentlemen, I think there will be no doubt in your mind that  
17 she was committing those crimes of robbery and kidnapping. If  
18 Mr. Polites died as a result of her committing these crimes she  
19 is guilty of felony murder. Now, Mr. Weichsel read to you  
20 those affirmative defenses. Well, ladies and gentlemen, what  
21 he forgot to tell you, and the judge will tell you, is if the  
22 State shows any one of those things she's not entitled to the  
23 defense. And he said well she was not armed with a deadly  
24 weapon. Well again, I would disagree with that, it was  
25 constructive possession. But let's give her that one for a

1 moment; did not commit the homicidal act. Again, we don't know  
2 who really committed it, but let's give her that one to. Had  
3 on reasonable ground to believe that any participant intended  
4 to engage in conduct likely to result in death. I totally  
5 disagree with that but hey, let's give her that one too. He  
6 forgot to read you one of the most important ones. Had no  
7 reasonable ground to believe that any other participant was  
8 armed with a weapon. Ladies and gentlemen, from her own mouth  
9 we know that she knew that there were two guns in the house.  
10 This one -- and you only need one, as long as the State shows  
11 you beyond a reasonable doubt that she knew there were guns in  
12 the house she is not entitled to the affirmative defense. And  
13 he left that one out because, ladies and gentlemen, even he  
14 knows that one's going to be a tough one to overcome. I don't  
15 have to disprove all four of their affirmative defenses, only  
16 one. I think the evidence shows at least three out of four are  
17 going to be disproved, but forget it, it only takes one. Did  
18 she know that there were guns or deadly weapons? Yes, yes,  
19 yes. She is then guilty of felony murder.

20 I am going to ask you to listen carefully to the  
21 judges instructions. I know you've been listening very  
22 carefully all along to all the testimony. Listen to what he  
23 says but please, I am imploring you, begging you, don't look --  
24 don't look past the facts. No matter how much these doctors  
25 want you to ignore the facts, the facts speak volumes. Think of

1 a reason why Jamie Farthing would exaggerate her history, lie  
2 about her history and lie about the facts of this case. It is  
3 to escape responsibility for the crimes of murder, armed  
4 robbery and kidnapping. And I am going to ask you, do not let  
5 her escape responsibility. Find her guilty of the charges  
6 contained in the indictment. Thank you.

7 THE COURT: Thank you, Ms. Baglivi. All right,  
8 ladies and gentlemen, it's a quarter after twelve. As I  
9 indicated to you and I believe I've -- I've received word that  
10 your lunch is downstairs. You have a half hour lunch, you'll  
11 come back, I'll charge you. My charge will take about two  
12 hours, so you prepare yourself for that, okay? Do not discuss  
13 the case now, you can go downstairs. Don't leave the building.  
14 You have your lunch here, you're coming back up.

15 (PAUSE - THE JURY LEAVES THE COURTROOM)

16 MR. WEICHSEL: Judge, I -- I have a number of  
17 objections to the prosecutor's summation.

18 THE COURT: Yes?

19 MR. WEICHSEL: One, the prosecutor -- and I'll go  
20 through all of them. The prosecutor stated when you hear from  
21 the defendant the abuse excuse, well defendant didn't testify  
22 and the defendant has no obligation to testify. And I believe

23 --

24 THE COURT: I'm sorry, say that -- she said what?

25 MR. WEICHSEL: She said we hear from the defendant

1 the abuse excuse. And the defendant -- you know, we didn't  
2 hear from the defendant. The defendant has no obligation to  
3 testify. In the same vein she said out of the mouth of this  
4 defendant at another point. Also she -- she indicated in  
5 summation that items were pawned at Modell's. I think the  
6 testimony was that they -- they couldn't determine whether  
7 anything was pawned at Modell's. And then another point the  
8 prosecutor in talking about when she came back to New York  
9 said, you know, to continue what they were doing. I think  
10 that's a clear inference that they were going to come to New  
11 York and commit other crimes and there's been no evidence of  
12 other crimes here. And lastly, the prosecutor said you know, in  
13 terms of her duty at River Road -- duty in Edgewater is -- you  
14 know, why didn't she go down and flag anyone down. Well she  
15 has no duty to do that, judge.

16 THE COURT: Okay. You want to respond?

17 MS. BAGLIVI: Yes, judge. Judge, the comments were -  
18 - we hear from the defendant the abuse excuse, out of the mouth  
19 of the defendant -- judge, that is what is testified to by the  
20 doctors and I think I cleared that up later on when I said the  
21 defendant told the doctors and the doctors are telling us.  
22 That's what that was referring to, we hear the abuse excuse.  
23 Where do we hear that from? We hear it --

24 THE COURT: All right.

25 MS. BAGLIVI: Okay.

1 THE COURT: As far as --

2 MS. BAGLIVI: Judge --

3 THE COURT: All right, let me respond to that.

4 MS. BAGLIVI: Sure.

5 THE COURT: As far as the hear -- the abuse excuse,  
6 the jury knows that the defendant did not testify, I mean they  
7 were here. It -- that particular remark is said in the context  
8 of part of the defendant's defense as the abuse excuse as  
9 referred to by the -- by the prosecutor. And from the mouth of  
10 the defendant; certainly the defendant did not testify and I'm  
11 sure the jury can interpret that remark as being the position  
12 of the defense in its defense. So I find that to be fair  
13 comment in view of all the circumstances in this case.

14 THE COURT: Go ahead.

15 MS. BAGLIVI: The issue of the Modell's, judge, the  
16 defendant's own third confession talks about pawning stuff --  
17 she called it Models.

18 THE COURT: I have no problem with that.

19 MS. BAGLIVI: Okay, and the last one --

20 THE COURT: Modell's, the remark on Modell's, let the  
21 jury rely upon their own recollection as to what the testimony  
22 was. You're saying there was no testimony as to the -- any  
23 pawning or -- they'll rely upon theirs'. And there is mention  
24 of Modell's and how it fits into the whole case is one which  
25 the jury has to depend upon their own recollection.

1 MS. BAGLIVI: And the last comment that she returned  
2 to New York to continue what they're doing. He takes that out  
3 of context because the next words out of my mouth were living  
4 the high life and living high on the hog, going back to the  
5 hotels.

6 THE COURT: I find that to be a fair comment given  
7 the testimony. And that's it? Is that the --

8 MR. WEICHSEL: And not flag anyone down, judge.

9 MS. BAGLIVI: Oh.

10 THE COURT: Oh, flag, yeah, I see that one.

11 MS. BAGLIVI: The --

12 THE COURT: That's again fair comment. It's -- it's  
13 -- the comment is taken in the context that when something was  
14 happening at Jamie Polites' apartment, and the River Road would  
15 be the main street that's in that area, as a comment that can  
16 counteract the position taken by the defendant that when she  
17 became aware that a death had taken place, that was an option  
18 she could have taken, she chose not to. All right? It's a  
19 fair comment again by the prosecutor. I don't think the  
20 prosecutor was saying that she had an obligation to go up  
21 there. She was saying the fact that she didn't do anything.  
22 She may have -- so again, given the totality of the  
23 circumstances I believe that all of the remarks that the  
24 prosecutor at this time in her summation were all part of fair  
25 comment given the evidence as it's been presented.

1 It is now 20 minutes after twelve, I will expect us  
2 to be assembled here for -- at ten minutes to one for my charge,  
3 all right?

4 MS. BAGLIVI: Thank you.

5 MR. WEICHSEL: Thank you, sir.

6 (RECESS)

7 THE COURT: Ready to go, Mr. Weichsel?

8 MR. WEICHSEL: Yes, I am, judge.

9 THE COURT: Ms. Baglivi?

10 MS. BAGLIVI: Yes, Your Honor.

11 THE COURT: Bring up the jury please. The spectators  
12 know I'm going to lock the courtroom and you won't be able to  
13 leave? They told you that? Okay.

14 MR. WEICHSEL: They -- they know that, judge.

15 (PAUSE - THE JURY ENTERS THE COURTROOM)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 THE JURORS: Good afternoon.

18 THE COURT: As I had mentioned to you, or I'll tell  
19 you now, we're going to lock the courtroom doors. This is one  
20 of the few times that a courtroom is locked and it's during the  
21 charge. A sign is hung out there that -- not to disturb us  
22 because the court is charging. My officer hangs a sign out  
23 there -- I don't know if he has it -- yeah, there it is. And  
24 the purpose for that is so that you're not distracted with  
25 people coming and out of the courtroom during the court's



1 charge.

2 Now anybody who comes in the courtroom has to stay,  
3 they can't get out, okay? And anybody outside can't get in  
4 once we start, all right?

5 Now, ladies and gentlemen of the jury, as you know  
6 the evidence in this case has been presented, the attorneys  
7 have completed their summations. We now arrive at the time  
8 when you, as jurors, are to perform your final function in this  
9 case.

10 At the outset let me express my thanks and my  
11 appreciation to you for your attention in this case. And I  
12 understand, and believe me, we do appreciate the fact that it  
13 entails some sacrifice on your part coming down here for the  
14 last couple weeks.

15 I would like to commend counsels also for the  
16 professional manner in which each have presented their  
17 respective cases and for their courtesies to the court and to  
18 the jury during the course of this trial. I thank you,  
19 counsels.

20 Now before we -- you retire to deliberate and reach  
21 your verdict it is my obligation to instruct you as to the  
22 principles of law applicable to this case. Now you shall  
23 consider my instructions in their entirety and not pick out any  
24 particular instruction or overemphasize it. You must accept  
25 and apply this law for this case as I give it to you in this

1 charge. Any ideas that you have of what the law is or what the  
2 law should be or any statements by the attorneys as what the  
3 law may be must be disregarded by you if they are in conflict  
4 with my charge.

5 Now during the course of the trial I was required to  
6 make certain rulings on admissibility of the evidence, either  
7 in or outside of your presence. These rulings involved  
8 questions of law. The comments of the attorneys on these  
9 matters were not evidence and in ruling I have decided  
10 questions of law. And whatever the rulings may have been in any  
11 particular instance you should understand that it has -- it was  
12 not an expression or an opinion by me on the merits of the  
13 case. Neither should any -- neither should my other rulings on  
14 any other aspect of the trial be taken as favoring one side or  
15 the other. Each matter was decided on its own merits.

16 Now when I use the term evidence I mean the testimony  
17 you have heard and seen from the witness box and the exhibits  
18 that have been admitted into evidence. Any testimony that I  
19 may have had occasion to strike is not evidence and shall not  
20 enter into your final deliberations, they must be disregarded  
21 by you. This means that even though you may remember the  
22 testimony you are not to use it in your deliberations or  
23 discussions. And further, if I gave a limiting instruction as  
24 to how to use certain evidence that evidence must be considered  
25 by you for that purpose only, you cannot use it for any other

1 purpose. And I mention to you there has been references when  
2 the experts were here, asking the experts, the doctors whether  
3 they considered certain other co-defendants especially in their  
4 -- in their consideration of these opinions, these questions  
5 were asked. That in no way this court was allowing you to hear  
6 the testimony of say the co-defendants, they made statements,  
7 for any other purpose but for the -- not for the truth of that  
8 statement but that these -- these statements were given and  
9 whether the expert considered those statements, not the truth  
10 of the statement, okay? And that's the limiting instruction in  
11 that regard that I gave and I may have given you some others  
12 too. So you're only to consider the testimony for those  
13 purposes in which I intended for it to be presented to you.

14 Now as jurors it's your duty to weigh the evidence  
15 calmly and without passion, without prejudice or without  
16 sympathy. Any inference or any influence caused by these  
17 emotions has the potential to deprive both the State and the  
18 defendant of what you promised them, that is a fair and  
19 impartial trial by fair and impartial jurors. Also,  
20 speculation, conjecture and other forms of guessing play no  
21 role in the performance of your duty.

22 Again I remind you that the indictment, that the  
23 defendant stands before you on an indictment returned by the  
24 grand jury charging her with various crimes; robbery, -- I  
25 guess it's' two counts of robbery, Mr. Hippman and Mr. Polites,

1 kidnapping of both Mr. Hippman and Mr. Polites, the murder of  
2 Mr. Polites, the -- and also felony murder of Mr. Polites, the  
3 felony is two counts and I'll get through that with you. One,  
4 his death was caused while there was a -- while a robbery was  
5 being committed and his death was caused while a kidnapping was  
6 committed. Those are the two felonies, are kidnapping and  
7 murder -- I'm sorry, kidnapping and robbery and the felony --  
8 the death is caused while those felonies are being committed  
9 and I'll get into that with you. And of course the possessor  
10 crimes are the charge with regard to the -- to the weapons, one  
11 that the defendant is charged with possession, two counts or  
12 two charges that she possessed a weapon with -- for unlawful  
13 purposes and possessed a firearm, that's the firearm, without a  
14 permit on two counts -- two counts of that.

15 All right, now that indictment again is not evidence  
16 of the defendant's guilt on the charges. An indictment is a  
17 step in a procedure to bring the matter before the court and  
18 the jury for the jury's ultimate determination as to whether  
19 the defendant is guilty or not guilty of these charges. Stated  
20 in it, the defendant has pleaded not guilty to these charges.

21 Now again, I'll remind you now and I'll remind you  
22 again as we go along; you are to consider each charge  
23 separately, not just all in one. You take each one of them  
24 separately and you consider them. And you apply the law to  
25 them as I explain it to you.

1           Now the defendant on trial is presumed to be  
2 innocent. And unless each and every essential element of an  
3 offense charged is proved beyond a reasonable doubt the  
4 defendant must be found not guilty of that charge. The burden  
5 of proving each element of a charge beyond a reasonable doubt  
6 rests upon the State, and that burden never shifts to the  
7 defendant.

8           The defendant in a criminal case has no obligation or  
9 duty to prove her innocence or offer any proof relating to her  
10 innocence. Reasonable doubt is not a mere possible or  
11 imaginary doubt because everything relating to human affairs is  
12 open to some possible imaginary doubt. Reasonable doubt is an  
13 honest and reasonable uncertainty as to the guilt of the  
14 defendant existing in your minds after you have given full and  
15 impartial consideration to all of the evidence. It may arise  
16 from the evidence itself or it may arise from the lack of  
17 evidence.

18           Now in my preliminary charges when we started the  
19 case I explained to you that you are the judges of the facts.  
20 And as judges of the facts you are to determine the credibility  
21 of the various witnesses as well as the weight to be attached  
22 to their -- to their testimony. You and you alone are the sole  
23 exclusive judges of the evidence, of the credibility of the  
24 witnesses and the weight to be attached to the testimony of  
25 each witness. Regardless of what counsel said or I may have

1 said recalling the evidence in this case, it is your  
2 recollection of the evidence that should guide you as judges of  
3 the facts. Arguments, statements, remarks, openings and  
4 summations of counsel are not evidence and must not be treated  
5 as evidence. Although the attorneys may point out what they  
6 think important in this case you must rely solely upon your  
7 understanding and recollection of the evidence that was  
8 admitted during the trial. Whether or not the defendant has  
9 been proven beyond a reasonable doubt is for you to determine  
10 based on all the evidence presented during the trial. Any  
11 comments by counsel are not controlling. Remember, it is your  
12 sworn duty to arrive at a just conclusion after considering all  
13 of the evidence which was presented during the course of the  
14 trial.

15           Now the function of the court, that's me, is separate  
16 and distinct from the function of the jury. It's my  
17 responsibility to determine all questions of law arising during  
18 trial and to instruct the jury as to the law which applies in  
19 this case. Now you must accept the law as I give it to you and  
20 apply it to the facts as you find them to be. I have sustained  
21 objections to some questions asked by counsel which may have  
22 contained statements of certain facts. Now the mere fact that  
23 a -- an attorney asks a question and inserts facts or comments  
24 or opinions in that question in no way proves the existence of  
25 those facts. Now you will only consider such facts which in

1 your judgment have been proven by the testimony of witnesses or  
2 from exhibits admitted into evidence by the court.

3 Now the fact that I may have asked questions of a  
4 witness in the case must not influence you in any way in your  
5 deliberations. The fact that I asked such questions does not  
6 indicate that I hold any opinion one way or the other as to the  
7 testimony given by the witness. Any remarks made by me to  
8 counsel or by counsel to me or between counsels are not  
9 evidence and should not affect or play any part in your  
10 deliberations.

11 Now we'll talk about the evidence. First of all I  
12 remind you, evidence may be either direct or circumstantial.  
13 We talked about this in my preliminary instructions and we'll  
14 go over it again.

15 Direct evidence means evidence that directly proves a  
16 fact without an inference and which in itself if true  
17 conclusively establishes that fact. On the other hand,  
18 circumstantial evidence means evidence that proves a fact from  
19 which an inference of the existence of another fact may be  
20 drawn. An inference is a deduction from fact that may  
21 logically and reasonably be drawn from another fact or group of  
22 facts established by the evidence. Whether or not inferences  
23 should be drawn is for you to decide using your own common  
24 sense, your knowledge and every day experience. Ask yourselves  
25 is it probable, is it logical, reasonable. It's not necessary



1 that all the facts be proven by direct evidence, they may be  
2 proven by direct evidence, circumstantial evidence or a  
3 combination of direct and circumstantial evidence. All are  
4 acceptable as means of proof. In many cases circumstantial  
5 evidence may be more certain, satisfying and persuasive than  
6 direct evidence. Remember the example I used about the snow?  
7 That's the -- the classic example of circumstantial evidence  
8 where you draw inferences from certain facts. And direct  
9 evidence is he sees the snow coming down. So direct and  
10 circumstantial evidence should be scrutinized however, and  
11 evaluated carefully. A verdict of guilty may be based on  
12 direct evidence alone, circumstantial evidence alone or a  
13 combination of direct evidence and circumstantial evidence  
14 provided of course that it convinces you of the defendant's  
15 guilt beyond a reasonable doubt.

16 Now the reverse is also true. A defendant may be  
17 found not guilty by reason of direct evidence or circumstantial  
18 evidence or a combination of the two, or a lack of evidence if  
19 it raises in your mind a reasonable doubt as to the defendant's  
20 guilt.

21 Now the credibility of the witnesses, and there were  
22 a list of witnesses; the investigating officers from the  
23 Prosecutor's Office; there were people who testified from the -  
24 - from the different banks that came in. I can go through the  
25 whole list.

1 John Acunto was the partner who discover the body;  
2 Edith Makowski was one of the officer's from the Chase Bank  
3 that testified; Karen Marie Hedley was the barmaid at the  
4 saloon/bar in -- in Fort Lee; and of course the victim, one of  
5 the alleged victims, Robert Hippman, Hackensack; Thomas Delgado  
6 from the Bronx, I think he testified with regard to the King  
7 Jewelry Store; Vincent Lupino -- I'm just going down the list,  
8 this is -- doesn't necessarily mean the order they testified.  
9 Vincent Lupino was the fellow who was on the opposite softball  
10 team that came in and testified he was there when an alleged  
11 phone call was made at the saloon/bar after the softball game  
12 the night Mr. Polites was alleged to have died; a Leonard  
13 Marshall, of course a friend of the deceased, former Giant  
14 football player, you recall his testimony; William Mooney, he  
15 was the doorman at the Hackensack apartment of Mr. Hippman;  
16 Magda Molena Rahey, which is the half sister of Ivy Demolena --  
17 Demolena; Donald Sposa, he's a -- I guess the partner of the  
18 deceased in the saloon/hotel -- saloon/bar; Mr. Polites' mother  
19 testified, Stella; numerous investigators from the Prosecutor's  
20 Office, Trahey, Lieutenant Michael Trahey, a Senior  
21 Investigator Carlos Rodriguez, Lieutenant Roger Kane, Senior  
22 Investigator Frank Kelaheer, Senior Investigator Terrance Alver,  
23 a Lieutenant John Hines of the Hackensack Police Department,  
24 Detective Sergeant Hugh Farley, he's retired from the  
25 Hackensack Police Department, he came and testified, a Police

1 Officer Scott Spagnel who was the responding officer to the  
2 initial call by Mr. Hippman's; the Bergen County Sheriff's  
3 Department was a Corrections Officer Brian Shaw who came in and  
4 testified with regard to -- I believe he testified as to Ms.  
5 Farthing's request to talk or to see somebody in the  
6 Prosecutor's Office, he was on guard duty when she was  
7 incarcerated at Bergen County Jail; the Edgewater Police  
8 Department, Sergeant Dominick Ray who arrived at the scene of  
9 the -- the murder, of the murder scene; Suffolk County Police  
10 Department, William Donahue; Detective Michael Duggan of the  
11 New York City Police Department, the Robbery Squad, he came  
12 over and testified; and there was Mr. Jason Farthing -- I'm  
13 sorry, Jason Farthing didn't testify, Jessie Farthing  
14 testified; Mr. Farthing -- I don't -- I guess it's Jason, is  
15 that the father?

16 MR. WEICHSEL: Paul, Your Honor.

17 THE COURT: That's Paul. I didn't have it marked  
18 here. It was Paul Farthing, the father of the defendant, her  
19 brother Jessie and her stepmother Kathy testified on her  
20 behalf. And then of course I'll go into the experts who  
21 testified; Jonathan Kleinman, the psychologist; Dr. Apolito and  
22 Dr. Simring. There may have been a name or two I missed, I  
23 left out here, but only because I neglected when he testified.  
24 Dr. -- the medical examiner of course, Dr. Singh, and anybody  
25 else whose name I may have left out here you will consider

1 also. Oh see, there's Paul's name.

2 Now as judges of the facts you have to determine the  
3 credibility of these witnesses. And in determining whether a  
4 witness is worthy of belief and therefore credible you may take  
5 into consideration the following; the appearance and the  
6 demeanor of the witness, the manner in which he or she may have  
7 testified, the witness' interest in the outcome of the trial,  
8 if any, his or her means of obtaining knowledge of the facts,  
9 the witness' power of discernment, meaning their judgment,  
10 understanding, his or her ability to reason, observe, recollect  
11 or relate, the possible bias, if any, in favor of the side for  
12 whom the witness testified. You can consider the extent to  
13 which, if at all, each witness is either corroborated or  
14 contradicted, supported or discredited by other evidence,  
15 whether the witness testified at -- with an intent to deceive  
16 you, the reasonableness or unreasonableness of the testimony  
17 that the witness has given, and any other matters in the  
18 evidence which serve to support or discredit his or her  
19 testimony. And through this analysis as the judges of the  
20 facts you weigh the testimony of each witness and then  
21 determine the weight to -- to give it. And through that  
22 process you may accept all of it, a portion of it, or none of  
23 it.

24 Now there is for your consideration in this case an  
25 alleged oral statement made by the defendant. It is your

1 function to determine whether or not such statement was  
2 actually made by the defendant and if made whether such  
3 statement or any portion of it is credible. You are also to  
4 determine whether it was voluntarily given, whether she freely  
5 gave the statement and wasn't coerced, you determine that. Now  
6 in considering whether or not the statement was -- the  
7 statement was actually made by the defendant and freely given  
8 or whether it is credible you should receive high -- strike  
9 that.

10 In considering whether or not the statement was  
11 actually made by the defendant, and if made, whether it is  
12 credible, you should receive, weigh and consider such evidence  
13 with caution in view of the generally recognized risk of  
14 misunderstanding, inaccuracies and error in communication and  
15 recollection of verbal communication by the hearant. Now this  
16 statement we have is done by a -- I believe was referred to as  
17 a -- a stenographic statement. The specific words used and the  
18 ability to remember them are important to the correct  
19 understanding of any verbal communication because presence or  
20 absence or change of a single word may substantially alter the  
21 true meaning of even the shortest statement -- shortest  
22 sentence. So there's oral -- she gave an oral statement and  
23 then she also gave a written statement. So you are to consider  
24 those factors in determining that in your evidence. So receive  
25 this -- you should receive therefore, weigh it and consider

1 such evidence with caution, especially an oral statement.

2 Now let's go into the elements of the charges  
3 themselves. You're also to consider the -- certain evidence,  
4 and there's a list of items that run up into the 200's. It  
5 will all be available to you. You can see anything you want.  
6 I'm going to permit to go into the jury room any photographs --  
7 well I'm permitting anything you want, I'm just talking about  
8 the bulk, all those items. My officers will be available to  
9 bring it -- we can pile it all in there with you. The charts,  
10 photographs and all will be readily available to you. All the  
11 boxes of other items I'm going to leave outside the jury room  
12 in the hallway. If you want to see anything just ask for it,  
13 all right? You've seen what has gone in. The photographs I  
14 said you will be able to -- it's not as cumbersome as some of  
15 the testimony you have.

16 Now let's go back now to the charges themselves. I'm  
17 going to explain to you each charge and each count. And we're  
18 going to go through it as it's set forth in the verdict sheet.  
19 And I'm going to ask my officer to hand out the verdict sheets.  
20 Now this verdict sheet that I have here is one that you will  
21 have in the jury room with you; you will only have one. The  
22 purpose of my handing these -- don't open them up now and go  
23 through them, just leave them on your lap for the moment. But  
24 the reason I'm handing out the verdict sheets at this time is  
25 so that you can follow my instructions. And you can -- and

1 we'll go through them as they are set forth in the verdict  
2 sheet. When I finish this I'm going to collect all those  
3 verdict sheets back again, I don't want them floating around.  
4 And then when you go into your jury room to deliberate one  
5 verdict sheet will go in because that will be the official one  
6 that you use. All right? All right, does everybody have it?  
7 All right, now don't read it. Put it down. Put it down and  
8 don't read the paper, in fact turn them over so you're not  
9 tempted to read them, we'll get to them in a moment.

10 Now if you recall the first charge in the indictment  
11 -- let me get the indictment out -- charges that Jamie Farthing  
12 on August 4, 1994 -- Ivy Demolena and Thomas Christopher James  
13 and -- they're also charged in this count too, but they're not  
14 for your consideration here. You are only to consider Jamie  
15 Farthing. On August 4 in Hackensack and within the  
16 jurisdiction of this court did unlawfully confine Robert  
17 Hippman for the substan -- for a substantial period with the  
18 purpose to facilitate the commission of a crime or flight  
19 thereafter and did fail to release the said Robert Hippman  
20 unharmed and/or in a safe place prior to apprehension. That's  
21 contrary to the statute. That's count number -- that's the  
22 first charge. Now if you turn over your verdict sheet you'll  
23 see the first charge. And that's the question, "How do you  
24 find as to the charge that Jamie Farthing on August 4 did  
25 kidnap Robert Hippman?" and that's the charge, all right?



## The Court's Charge to the Jury

96

1 Now if you would turn to charge number eight, which  
2 will be the second -- the third -- three pages from the end.  
3 Now that's the kidnapping charge of James Polites. Now let me  
4 just get that here in the indictment. All right, the charge is  
5 that on August 5 in the Borough of Edgewater, Jamie Farthing is  
6 charged with she did engage in the commission of the crime of  
7 kidnapping during which she or another caused the death --  
8 sorry, it's -- it's the wrong one. August 5, 1994 in the  
9 Borough of Edgewater she's charged with did unlawfully confine  
10 James Polites or Polites for the -- a substantial period of --  
11 with the purpose to facilitate the commission of a crime or  
12 flight thereafter -- thereafter, and inflict bodily injury on  
13 James Polites and did fail to release the said James Polites  
14 unharmed and in a safe place prior to her apprehension. Okay?  
15 So those are two counts of kidnapping.

16 Now I'm going to charge you as to the law with  
17 kidnapping. It's applicable to charge one and charge eight.  
18 All right? Now you can stay with page one. All right, and  
19 this -- the law I'm going to give you now is applicable to  
20 charge one and also charge number eight which is at the pages  
21 back there. Now the -- the defendant as I said is charged with  
22 the crime of kidnapping. And I just read you the indictment  
23 pertinent to count -- charge one in count -- and charge eight.  
24 Here's the law.

25 "A person is guilty of kidnapping if he unlawfully

1 removes another from the place where he is found, or if he  
2 unlawfully removes another from his place of residence or  
3 business, or a substantial distance for the vicinity where he  
4 is found, or if he is unlaw -- if he is unlawfully confined,  
5 confines another -- if he unlawfully confines another for a  
6 substantial period with any of the following purposes."

7           So for our purposes in this case is, "A person is  
8 guilty of kidnapping if he unlawfully confines another for a  
9 substantial period with -- with the following purpose." Any --  
10 any of the following purposes. "1) To facilitate the  
11 commission of a crime or flight thereafter, or inflict bodily  
12 injury on or to terrorize the victim or another." All right?  
13 That's the definition of kidnapping. "A person is guilty of  
14 kidnapping if he unlawfully confines another for a substantial  
15 period of time to facilitate the commission of any crime or  
16 flight thereafter or to facili -- or to inflict bodily injury  
17 on or to terrorize the victim or another." All right?

18           In order for you to find the defendant guilty of  
19 kidnapping the State is required to prove each of the following  
20 elements beyond a reasonable doubt. 1) That the defendant,  
21 Jamie Farthing, unlawfully confined, in this case Jamie Polites  
22 and/or Robert Hippman, depending on which count -- which charge  
23 you're dealing it -- dealing with -- for a substantial period;  
24 2) that the confinement was for the purpose to facilitate the  
25 commission of any crime or flight thereafter. All right,

1 that's what the State must prove beyond a reasonable doubt.

2 Now in relation to the first element you will note  
3 that I have used the term "unlawful confinement". A  
4 confinement is unlawful if it is accomplished by force, threat  
5 or deception. Unlawful confinement must be for a substantial  
6 period however, for this purpose a substantial period is not  
7 measured in seconds, in minutes or hours, nor by any other  
8 standard based strictly on the passage of time, rather a  
9 substantial period is one that is significant in that it is  
10 more than incidental to the underlying crime and substantially  
11 increases the risk of harm to the victim. That increases  
12 victim -- that increased risk of harm must not be trivial. If  
13 the victim is confined for only a slight period of time and  
14 such confinement does not create the isolation and increased  
15 risk of harm that are at the heart of the kidnapping statute  
16 then you should not convict the defendant of the kidnapping  
17 charge.

18 All right, therefore in determining whether the  
19 confinement is substantial you may consider 1) the duration of  
20 the confinement, 2) whether the confinement occurred during the  
21 commission of a separate offense, 3) whether the confinement  
22 which occurred is inherent in the separate offense, and 4)  
23 whether the confinement created a substantial danger to the  
24 victim independent of that posed by the separate offense.

25 Now the second element that the State is required to

## The Court's Charge to the Jury

99

1 prove is that the confinement was with the purpose to  
2 facilitate the commission of any crime or flight thereafter. I  
3 have told you that to constitute kidnapping an unlawful removal  
4 or confinement must have been with a specific purpose.  
5 Therefore I must define purpose for you. Now you're going to  
6 hear this word purpose in -- in most of the charge, we'll go  
7 back and forth over it.

8 Now, a person acts purposely with respect to the  
9 nature of his conduct or the result thereof or the result of  
10 his conduct if it is his conscious object to engage in conduct  
11 of that nature and to cause such a result. That is, if a  
12 person means to do what he does or she does, or to cause such a  
13 result.

14 A person acts purposely with respect to the attendant  
15 circumstances if the person is aware of the existence of such  
16 circumstances or believes or hopes that they exist. Now with  
17 purpose or with design, or with design are -- are equivocal  
18 terms, they have the same meaning.

19 The nature of the purpose with which the defendant  
20 acted toward the victim is a question of fact for the jury to  
21 decide. Purpose is a condition of the mind which cannot be  
22 seen and can only be determined by inference drawn from the  
23 defendant's conduct; from defendant's conduct, from defendant's  
24 words or acts as they have been presented in the evidence that  
25 you have heard and seen in this case. It is not necessary that

## The Court's Charge to the Jury

100

1 the State produce a witness or witnesses to testify or the  
2 defendant -- that the defendant stated for example that her  
3 purpose or his purpose in confining Jamie Polites or -- and/or  
4 Robert Hippman was to facilitate the commission of any crime or  
5 flight thereof. That is, an aid -- aid in committing the crime  
6 or fleeing after -- or -- or fleeing afterward. It is within  
7 the power of the jury to find that the proof of purpose has  
8 been furnished beyond a reasonable doubt by inferences which  
9 you may draw from the nature of the acts and the circumstances  
10 surrounding the conduct under investigation as they have been  
11 presented in evidence to you -- in the evidence you have heard  
12 and seen in this case.

13 Now a section of our statute -- and this is where we  
14 get back to the verdict sheet. The verdict sheet now says if  
15 find him guilty of kidnapping -- you see that next question  
16 there? If you find the defendant guilty -- if you find the  
17 defendant Jamie Farthing guilty of kidnapping you must then  
18 answer question 1-A and question 1-B, both. The question is,  
19 "Did Jamie Farthing release the victim," that's Robert Hippman,  
20 "unharmd prior to her apprehension?" You just answer yes or  
21 no. And "Did Jamie Farthing release," then 1-B is, "Did Jamie  
22 Farthing release the victim Robert Hippman in a safe place  
23 prior to her apprehension?" All right? You'll answer that yes  
24 or no. And that's the same question is also asked with regard  
25 to count eight or charge number eight which -- which applies to

## The Court's Charge to the Jury

101

1 Jamie Polites.

2           So let me go -- now let me explain to you what that  
3 means. A section of our statute provides that kidnapping is a  
4 crime of the first degree except that it is a crime of the  
5 second degree if the -- if the kidnapper releases the victim  
6 unharmed and in a safe place prior to apprehension. Now in  
7 this case the State alleges the defendant did not release the  
8 victim unharmed and in a safe place prior to her apprehension.  
9 Now the burden of proof is on the State to prove beyond a  
10 reasonable doubt that the victim was either harmed or not  
11 released in a safe place prior to the defendant's apprehension.  
12 Unless you find that the State has carried this burden you must  
13 find the defendant not guilty of kidnapping in the first  
14 degree. Now that will take care of itself by answering those  
15 questions. You understand? Therefore if you find the State  
16 has not proven to you beyond a reasonable doubt each and every  
17 element of the crime of kidnapping as I have defined that crime  
18 to you then you must find the defendant not guilty. If you  
19 find her not guilty of kidnapping, question number one, don't  
20 even consider question number 1-A and 1-B, you don't have to.  
21 But you have to do 1-C and I'll get to that in a minute. If  
22 you find that the State has proved to you beyond a reasonable  
23 doubt that the defendant committed the crime of kidnapping,  
24 that is question one, as I have defined that crime to you, but  
25 the State has not convinced you beyond a reasonable doubt that

1 the victim was either harmed or not released in a safe place  
2 prior to the defendant's apprehension then you must find the  
3 defendant not guilty of kidnapping in the second degree. And  
4 if you answer the question no there that will take care of  
5 that. Now if you find beyond a reasonable doubt that the  
6 defendant committed the crime of kidnapping and that he harmed  
7 the victim -- or he or she harmed the victim or did not release  
8 the victim in a safe place prior to the defendant's  
9 apprehension then you must find the defendant guilty of  
10 kidnapping in the first degree.

11 Now if you find the defendant is not guilty of  
12 kidnapping, that is not guilty of question number one or  
13 question number -- I guess it's eight, is it? I don't think I  
14 have that here, let me see. Or question number eight. If you  
15 find her not guilty of question number eight or question number  
16 one then you can -- you are to consider what we refer to as a  
17 lesser included offense, and in this case it's called criminal  
18 restraint. The lesser included charge in the kidnapping is  
19 criminal restraint. The statute reads that, "A person is  
20 guilty of criminal restraint if he knowingly restrains another  
21 person unlawfully in circumstances exposing the other person to  
22 risk of serious bodily injury." In order for you to find the  
23 defendant Jamie Farthing guilty of this offense the State has  
24 to prove the essential elements of this offense to you beyond a  
25 reasonable doubt. And these elements are first of all that the



## The Court's Charge to the Jury

103

1 defendant Jamie Farthing knowingly restrained Jamie Polites  
2 and/or Robert Hippman, and 2) that the restraining was known by  
3 the defendant to be unlawful, and 3) that the restraint was  
4 under such circumstances which exposed Jamie Polites and/or  
5 Robert Hippman to serious bodily injury.

6 Now I've used the term restraint -- the terms  
7 restraint, knowingly, lawfully and serious bodily injury. Let  
8 me explain those words. The words restraint means confinement  
9 or limitation or abridgement. Restraint involved hinderance,  
10 confinement or restriction of liberty. If a person acts  
11 knowingly with respect to the nature of his conduct or the  
12 intendant circumstances, if he is aware that his or her conduct  
13 is of that nature and that such circumstances exist or is aware  
14 of high probability of their existence. A person acts  
15 knowingly with respect to the result of the con -- his or her  
16 conduct if he or she is aware that it is practically certain  
17 that his or her conduct would cause such a result. Knowing,  
18 with knowledge are equivalent terms, they have the same  
19 meaning.

20 Now I have used the term unlawful. Unlawful means to  
21 accomplish the restraint by -- by force, threat or deception.

22 The term serious bodily injury means bodily injury,  
23 injury which creates a substantial risk of death or which  
24 causes serious permanent disfigurement or protracted loss or  
25 impairment of the functions of any body member or organ.

1           Now if after consideration of all of the evidence you  
2 are convinced beyond a reasonable doubt that the defendant did  
3 knowingly, unlawfully restrain Jamie Polites and/or Robert  
4 Hippman and that such restraint exposed Mr. Polites and Mr.  
5 Hippman to risk of serious bodily injury then your verdict  
6 should be guilty. If however, after considering all of the  
7 evidence you find that the State has failed to prove each of --  
8 each and every element of the offense charged beyond a  
9 reasonable doubt then your verdict must be not guilty. All  
10 right?

11           Now that's the law with regard to kidnapping.  
12 Remember, you have to consider kidnapping itself. If you find  
13 the defendant is not guilty of kidnapping then you go and  
14 consider criminal restraint. If you find him guilty of  
15 kidnapping you don't have to consider criminal restraint  
16 because that's a lesser included offense. If you find him  
17 guilty of kidnapping then consider the two questions which are  
18 did he release the victim unharmed prior to her apprehension --  
19 or did she or -- or he release the victim unharmed prior to  
20 apprehension. And the other question is was he released in a  
21 safe place prior to the apprehension, all right?

22           All right, turn to page two now. Charge number two  
23 is robbery. And it's also, you'll find it -- charge number  
24 nine, go back to the back. That's the -- charge number two is  
25 the robbery of Robert Hippman and charge number nine is the

## The Court's Charge to the Jury

105

1 robbery of James Polites, both charges. All right? That's the  
2 next to last page of the verdict sheet. I should have had the  
3 verdict pages numbered, it would have been easier to work with,  
4 but. Charge number nine is the next to last. Do you see those  
5 two?

6 All right, now let's talk about robbery, what the law  
7 is there. First of all we'll look at the indictment. He is  
8 charged with the crime of robbery and the indictment reads as  
9 follows. This is charge number two.

10 "Jamie Farthing," again, Ivy Demolena and Thomas  
11 James are mentioned in these -- in this count, but that's not  
12 your concern. "Jamie Farthing on or about August 4, 1994 in  
13 Hackensack in the course of committing a theft did use force  
14 upon Robert Hippman while armed with a deadly weapon." That's  
15 contrary to the law. That's the robbery charge.

16 Also, number -- number nine, charge number nine is  
17 that, "Jamie Farthing on or about August 5 in Edgewater in the  
18 course of committing a theft did use force upon James Polites  
19 and/or commit the crime of murder upon James Polites while  
20 armed with a deadly weapon."

21 All right, let me give you the law with regard to  
22 robbery. I'll give you the statute of what the law is.

23 "A person is guilty of robbery if in the course of  
24 committing a theft he or she knowingly inflicts bodily injury  
25 or uses force upon another, or in the course of committing a

## The Court's Charge to the Jury

106

1 theft he or she threatens another with or purposely puts him or  
2 her in fear of immediate bodily injury." That's robbery.

3 Now in order for you find the defendant guilty of  
4 robbery the State is required to prove each of the following  
5 elements beyond a reasonable doubt. First, that the defendant  
6 was in the course of committing a theft. I'll explain theft to  
7 you in a moment. Secondly the State must prove beyond a  
8 reasonable doubt is that while in the course of committing that  
9 theft the defendant knowingly inflicted bodily injury or used  
10 force upon another, or while in the course of committing the  
11 theft the defendant threatened another with or purposely put  
12 him in fear of immediate bodily injury; either one of those,  
13 that's the second element.

14 Now as -- as I have said, the State must prove beyond  
15 a reasonable doubt that the defendant was in the course of  
16 committing a theft. Now in this connection you are advised  
17 that an act is considered to be, quote, "In the course of  
18 committing a theft if it occurs in an attempt to commit the  
19 theft during the commission of the theft itself or in the  
20 immediate flight after the attempt or commission." And theft  
21 is defined as the unlawful taking or exercise of unlawful  
22 control over property of another with the purpose to deprive  
23 him thereof. I've used the word again, with purpose, and you  
24 may hear me use that phrase or the word purposely again. I  
25 shall now explain what it means.

1           A person acts purposely with respect to the nature of  
2 his conduct or the result thereof if it is his or her conscious  
3 object to engage in conduct of that nature or to cause such a  
4 result. So in addition to proving beyond a reasonable doubt  
5 that the defendant was in the course of committing a theft the  
6 State must also prove beyond a reasonable doubt that while in  
7 the course of committing a theft that the defendant acted  
8 knowingly. The defendant knowingly inflicted bodily injury or  
9 used force upon another. Now a person acts knowingly with  
10 respect to the result of his or her conduct if he or she is  
11 aware that it is practically certain that his or her conduct  
12 will cause such a result. A person acts knowingly with respect  
13 to the nature of his or her conduct if it is -- if she's aware  
14 that her conduct is of that nature. And then the phrase bodily  
15 injury means physical pain, illness or any impairment of  
16 physical condition. Force means an amount of physical power or  
17 strength used against a victim and not simply against the  
18 victim's property. The force may not entail pain or bodily  
19 harm and need not leave any mark, nevertheless force must be  
20 greater than that necessary merely to snatch the object from  
21 the victim's grasp or the victim's person. And the force must  
22 be directed against the victim, not merely the victim's  
23 property, or the victim threatened another with or purposely  
24 put him in fear of immediate bodily injury. The phrase bodily  
25 injury means physical pain, illness or any other impairment of

## The Court's Charge to the Jury

108

1 physical condition. As I mentioned, although no bodily injury  
2 may have resulted the prosecution must prove that the defendant  
3 either threatened the victim with or purposely put him in fear  
4 of such bodily injury.

5 All right, now a section of our statute provides that  
6 robbery is a crime of the second degree except that it is a  
7 crime of the first degree if the robber is armed with or uses  
8 or threatens the immediate use of a deadly weapon. Now go back  
9 to page two on the verdict sheet.

10 Charge two says, "How do you find as to the charge  
11 that Jamie Farthing on August 4, 1994 while in the course of  
12 committing a theft did use force upon Robert Hippman?" If you  
13 find her guilty of that then you have found her guilty of  
14 robbery. The next question will determine the degree of the  
15 robbery.

16 "During the course of the robbery was she armed with  
17 a deadly weapon, yes or no?" And that will take of that --  
18 that grade. If you find that she is not guilty of robbery then  
19 you do not answer that second question, all right? And that's  
20 the same -- same question as posed in charge number nine  
21 relating to James Polites, was she armed with a deadly weapon  
22 if she is found guilty of robbery there. All right?

23 So it's a crime of the first degree if the robber --  
24 see we're assuming now, we call the person a robber because a  
25 person found guilty of robbery becomes a robber, and now we

## The Court's Charge to the Jury

109

1 determine was she armed with or uses or threatens the immediate  
2 use of a deadly weapon. Now in this case it's alleged that the  
3 defendant was armed with a handgun, a deadly weapon while in  
4 the course of committing the robbery; the State claims it's a  
5 deadly weapon. In order for you to determine the answer to  
6 this question you must understand the meaning of the word or  
7 the term deadly weapon.

8 A deadly weapon is any firearm or -- or other weapon  
9 -- and then it gives you a whole list -- a device, instrument,  
10 material or substance, whether animate or inanimate which in  
11 the manner it is used or intended to be used is known to be  
12 capable of producing death or serious bodily injury or which in  
13 the manner it is fashioned would lead a victim reasonably to  
14 believe it to be capable of producing death or serious bodily  
15 injury. Again, I've given you the definition of serious bodily  
16 injury, that is bodily injury which creates a substantial risk  
17 of death and which means serious permanent disfigurement or  
18 protracted loss or impairment of the function of any body --  
19 bodily member or organ.

20 So to summarize that, if you find the State has not  
21 proven beyond a reasonable doubt any element of the crime of  
22 robbery as I have defined that crime to you then you must find  
23 the defendant not guilty. If you find that the State has  
24 proved beyond a reasonable doubt that the defendant committed  
25 the crime of robbery as I have defined the crime to you but you



1 have reasonable doubt as to whether the defendant was armed with  
2 or used or threatened the immediate use of a deadly weapon at  
3 the time of the commission of the robbery then you find the  
4 defendant guilty of robbery in the second degree. If you find  
5 beyond a reasonable doubt that the defendant committed the  
6 crime of robbery and was armed with a deadly weapon or used or  
7 threatened the immediate use of a deadly weapon at the time of  
8 the commission of the robbery then you find the defendant  
9 guilty of robbery in the first degree. And as I said, that  
10 will take care of itself by answering that question.

11 Now throughout this entire case, and I'm getting to  
12 the next area which if you turn to page number four, I'm  
13 talking about the possession of the weapons and -- well let me  
14 give you the -- I'll give you the charges on those two and then  
15 we'll get into the murder charge in a moment.

16 Number three and number four. Number three is that  
17 Jamie Farthing is charged that on the 4th of August 1994, that  
18 she possessed a H&R 32 caliber revolver and a Rossi 38 caliber  
19 revolver with the purpose to use it unlawfully against the  
20 person or property of another. And in count four, she's  
21 charged with possession of those weapons without having  
22 obtained a permit to carry the same. Now you see the question  
23 is how do you find as to those charges.

24 Now keeping in mind that the theory of the State has  
25 been accomplice liability, and I'm going to explain that to you

## The Court's Charge to the Jury

111

1 right after I finish these two, the concept of accomplice  
2 liability before we get into the murder. And you apply the  
3 accomplice liability theory to every count separately; you just  
4 don't take a blanket over everything, but separately on each  
5 one of them as you go through them.

6 So let me -- let's just do these two. Also on counts  
7 number three, four -- three and four and also on ten and 11 are  
8 the same similar charges except on the different days. One is  
9 on August 4 and that centers around the Hippman robbery in  
10 Hackensack, and the ten and 11 is the Polites event which is  
11 August 5, all right?

12 So let's do possession of a firearm with the purpose  
13 of us it unlawfully against the person or property of another.  
14 Counts three and -- I'm sorry, charges three and 12 of the  
15 indictment charge the defendant Jamie Farthing with the crime  
16 of possession of a firearm with the purpose to use it  
17 unlawfully against the person or property of another. The  
18 statute on which this count is in the indictment reads as  
19 follows.

20 "Any person who has in his possession" --

21 MR. WEICHSEL: Judge, I think it's charges three and  
22 ten, judge.

23 THE COURT: I'm sorry, three and ten, you're right.  
24 I have it written on the top here. Three and ten. Count ten  
25 is referring to the incident on the 5th of April in Edgewater,

## The Court's Charge to the Jury

112

1 all right?

2 MS. BAGLIVI: August.

3 THE COURT: And that's now both purpose -- possession  
4 of a firearm with the purpose to use it unlawfully against the  
5 person or property of another. Jamie Farthing is charged in  
6 count three and ten that she possessed a firearm with the --  
7 with the purpose to use it unlawfully against the person or  
8 property of another. That statute reads as following --  
9 follows.

10 "Any person who has in his or her possession any  
11 firearm with the purpose to use it unlawfully against the  
12 person or property of another is guilty of a crime."

13 Now I don't want you to read the verdict sheets, just  
14 leave them alone. I'll -- when I make reference to the verdict  
15 sheet then you know where I'm going, otherwise I'm reading  
16 something and you may be -- you may be caught up in something  
17 else. We'll get -- I'll cover every one of them. And then if  
18 you have any questions you can write them out and you come back  
19 and I'll explain it to you again. But I want you to pay  
20 attention to the charge, all right?

21 "A person who has in his possession any firearm with  
22 the purpose to use it unlawfully against the person or property  
23 of another is guilty of a crime."

24 In order for the defendant to be found guilty of this  
25 charge the State has the burden of proving beyond a reasonable

## The Court's Charge to the Jury

113

1 doubt each of the following four elements now. It must prove  
2 that the -- that the -- I -- do we have the -- what exhibit  
3 numbers were those, counsels?

4 MS. BAGLIVI: S-35A through -- I believe it's A and B  
5 are the two weapons.

6 THE COURT: The two weapons; what is it?

7 MS. BAGLIVI: S-35-A and B.

8 THE COURT: All right. S-35-A and B, the State has to  
9 prove beyond a reasonable doubt that they are fire -- firearms,  
10 that it's a firearm. Secondly, the defendant possessed the  
11 firearm and third that the defendant possessed the firearm with  
12 the purpose to use it against -- against another person, and  
13 four, the defendant's purpose was to use the firearm  
14 unlawfully. Those are the four elements that the State has to  
15 prove beyond a reasonable doubt. And a firearm means any  
16 handgun, rifle, shotgun, machine gun, automatic or semi-  
17 automatic rifle or any gun. All right?

18 The second element that the State has to prove is the  
19 -- is the concept of possession. I'll get you that in a  
20 minute. This is going to be applicable to the -- also to the  
21 charge that number four, that she's charged with possession of  
22 the firearms without a permit. So this concept of possession  
23 goes to both of those areas. The words possessed as used in  
24 criminal statutes signifies a knowing intentional control of a  
25 designated thing accompanied by a knowledge of its character,

## The Court's Charge to the Jury

114

1 thus a person must know or be aware that she possesses the  
2 item, in this case the guns, the firearms, and the person must  
3 know what it is that she possesses or controls, that is that it  
4 is a firearm. Now this possession cannot merely be a passing  
5 control that is fleeting and uncertain in its nature. In other  
6 words, to possess within the meaning of the law the defendant  
7 must knowingly procure or receive the item possessed or be  
8 aware of her control thereof for a sufficient period of time to  
9 have been able to relinquish control if she chose to do so. A  
10 person may possess a firearm even though it was not physically  
11 on her person at the time of the arrest if the person had in  
12 fact at some time prior to her arrest had control and dominion  
13 over it. Now when we speak of possession we mean conscious,  
14 knowing possession. The law recognizes two kinds of  
15 possession, they are actual possession and constructive  
16 possession.

17 A person is in actual possession of a certain -- of a  
18 particular article or thing when she knows what it is, that is  
19 the person has knowledge of its character and knowingly has --  
20 has it on her person at a given time.

21 Constructive possession. The law recognizes that  
22 possession may be constructive instead of actual, a person who  
23 with knowledge of its character knowingly has direct physical  
24 control over a thing at a given time is in actual possession of  
25 it. Constructive possession means possession in which the

1 person does not physically have the property but though not  
2 physically on one's person she is aware of the presence of the  
3 property and is able to exercise intentional control or  
4 dominion over it. A person who although not in actual  
5 possession has knowledge of its character knowingly has both  
6 the power and the intention at a given time to exercise control  
7 over a thing either directly or through another person or  
8 persons is then in constructive possession of it.

9 Now the law recognizes that possession may be sole or  
10 joint. If one person alone has actual or constructive  
11 possession of a thing the possession is sole, S-O-L-E. If two  
12 or more persons share actual or constructive possession of a  
13 thing possession is joint, that is if they knowingly share  
14 control over the article. That's the definition of the word  
15 possession in the legal possession.

16 So the second element the State must prove, first of  
17 all it must prove that S-35A and B is a firearm, secondly that  
18 the defendant possessed it, possessed the firearm.

19 The third element the State must prove beyond a  
20 reasonable doubt is that the defendant's purpose in possessing  
21 the firearm was to use it against another person or property,  
22 but it's another person. Purpose again is a condition of the  
23 mind which cannot be seen and can only be determined by  
24 inferences from conduct, words and acts.

25 Now in determining the defendant's purpose in

1 possessing the firearm you may consider that a person acts  
2 purposely with respect to the nature of her conduct or the  
3 result thereof -- or the result of her conduct if it is the  
4 person's conscious to engage in conduct of that nature or to  
5 cause such a result. That is, a person acts purposely if she  
6 means to act in a certain way and/or to cause a certain result.  
7 A person acts purposely with respect to the attendant  
8 circumstances if the person is aware of the existence of such  
9 circumstances or believes or hopes that they exist. The  
10 defendant's purpose or conscious object to use the firearm  
11 against another person may be found to exist at any time she is  
12 in possession of the object and need not have been the  
13 defendant's -- and it need not have been the defendant's  
14 original intention in possessing the object.

15           The fourth element the State must prove beyond a  
16 reasonable doubt is that the defendant had a purpose -- had a  
17 purpose to use the firearm in a manner that was -- that was  
18 prohibited by law. I've already defined purpose to you. A  
19 mental element of purpose to use a firearm unlawfully requires  
20 that you find the defendant possessed the firearm with the  
21 conscious objective, design or specific intent to use it  
22 against the person or property of another in an unlawful manner  
23 as charged in the indictment and not for some other purpose.  
24 In this case the State contends that the defendant's unlawful  
25 purpose in possessing the firearm was to threaten the victim



## The Court's Charge to the Jury

117

1 with force in order to commit theft, or robbery. You must not  
2 consider for your -- for your notions of unlawfulness of some  
3 other undescribed purpose of the defendant, but rather you must  
4 consider whether the State has proven the specific unlawful  
5 purpose charged. The State need not prove such specific  
6 completed crime the defendant intended to commit using the  
7 firearm. The unlawful purpose alleged by the State may be  
8 inferred by all that was said or done or from all of the  
9 surrounding circumstances of the case.

10 If you are satisfied beyond a reasonable doubt that  
11 the State has proven each of the elements of this offense as I  
12 have defined them then you must find the defendant guilty.  
13 However, if you find that the State has failed to prove beyond  
14 a reasonable doubt any one of the elements of this offense as I  
15 have defined them to you then you must find the defendant not  
16 guilty.

17 Charge number four and number 11, and that's that  
18 defendant Jamie Farthing is charged with in counts -- in  
19 charges four and 11 with unlawful possession of a handgun. The  
20 pertinent language of the statute is -- say as follows.

21 "Any person who knowingly has in his possession any  
22 handgun without first obtaining -- without first having  
23 obtained a permit to carry the same is guilty of a crime."

24 So the State has to prove beyond a reasonable doubt  
25 the following elements, there are three here for these charges.

1 First, that S-35-A and B is a handgun, two, that the defendant  
2 knowingly possessed the handgun, and that three, that the  
3 defendant did not have a permit to possess such a weapon.

4 Now I mentioned to you that a handgun is any -- any  
5 pistol, revolver, or other firearm originally designed or  
6 manufactured to be fired by the use of a single hand. The --  
7 that's what a handgun is as opposed to a weapon for unlawful  
8 purposes; this is a handgun now. A handgun is any pistol,  
9 revolver, or other firearm originally designed or manufactured  
10 to be fired by the use of a single hand.

11 The second element that the State must prove beyond a  
12 reasonable doubt is that the defendant knowingly possessed a  
13 handgun. I explained to you about the legal concept of  
14 possess.

15 The third element in this -- in these charges is that  
16 the State must prove that the defendant did not have a permit  
17 to possess such a weapon. Now if you find that the defendant  
18 knowingly possessed a weapon and that there is no evidence that  
19 the defendant had a valid permit to carry such a weapon then  
20 you may infer if you think it appropriate to do so based upon  
21 the facts presented that the defendant had no such permit.  
22 Note however, that as with all other elements the State bears  
23 the burden of showing beyond a reasonable doubt the lack of a  
24 valid permit and that you may apply the inference only if you  
25 feel it appropriate to do so under all of the facts and the

## The Court's Charge to the Jury

119

1 circumstances.

2 If any of the elements of the crime have not been  
3 proven to your satisfaction beyond a reasonable doubt your  
4 verdict must be not guilty. If on the other hand you are so  
5 satisfied beyond a reasonable doubt that the defendant  
6 knowingly possessed a handgun without a valid permit your  
7 verdict must be guilty.

8 Why don't we just stand up for a minute now, just for  
9 a stretch? I still have to give you the law on murder,  
10 aggravated manslaughter and reckless manslaughter and also  
11 felony murder, all right? So we have that to go through and I  
12 have to give you also the law regarding the liability or the  
13 accomplice liability concept. All right? You want to keep  
14 going or do you want to take a five minute break? It's going  
15 to be another hour. A break? Don't discuss the case now.  
16 Leave -- leave all these papers there. You can go into the  
17 hallway if you want to use the rest rooms, but don't leave the  
18 building.

19 (PAUSE - THE JURY LEAVES THE COURTROOM)

20 MR. WEICHSEL: Judge? Judge, you had indicated that  
21 you were going to give the law on accomplice liability and  
22 murder and manslaughter and felony murder. You also are going  
23 to give the law on diminished capacity I assume?

24 THE COURT: Oh, yeah.

25 MS. BAGLIVI: Yes, he is; he's got a lot more to go.

The Court's Charge to the Jury

120

1 THE COURT: I didn't want to load them on that.

2 MR. WEICHSEL: I didn't think so.

3 THE COURT: I'm going to give them -- yes, sure, I  
4 have a whole other --

5 MR. WEICHSEL: That's what I thought.

6 THE COURT: -- other things, sure. But I didn't want  
7 to load it all on them. I think it's meaningless to, all  
8 right?

9 (RECESS)

10 THE COURT: Might I continue?

11 MS. BAGLIVI: Yes, judge.

12 THE COURT: Bring up the jury please.

13 (PAUSE - THE JURY ENTERS THE COURTROOM)

14 THE COURT: All right, in the verdict sheet on charge  
15 number five, do you all have that? That purposeful and  
16 knowing murder, the first question there, number five, "How do  
17 you find as to the charge that Jamie Farthing did commit  
18 murder, that is that she purposely or knowingly caused the  
19 death or serious bodily resulting in the death of James Polites  
20 on August 5, 1994, not guilty or guilty?" Now if you follow  
21 that, and I'm going to instruct you on each one of these items.  
22 As you see, the next one says, "If you find the defendant  
23 guilty of murder then you proceed to count -- to charge number  
24 six." You just turn the page and go right into number six  
25 which is the kidnapping charge, all right? However, if you

## The Court's Charge to the Jury

121

1 find the defendant not guilty of murder then you consider the  
2 following questions, five -- question 5-A as to aggravated  
3 manslaughter; that's a lesser included offense. So if you find  
4 that she is not guilty of murder purposely and knowingly then  
5 consider manslaughter -- aggravated manslaughter. That  
6 question 5-A is, "How do you find as to the charge the Jamie  
7 Farthing did recklessly cause the death of James Polites on  
8 August 5, 1994 under circumstances manifesting extreme  
9 indifference to human life, not guilty or guilty?" If you find  
10 that she's guilty of that then you continue right onto number  
11 six. But if you find not guilty of 5-A then consider 5-B, that  
12 is the instruction is there, "If you find the defendant not  
13 guilty of aggravated manslaughter then consider the following  
14 question, 5-B, as to reckless manslaughter." That's even  
15 lesser. "How do you find as to the charge that Jamie Farthing  
16 did recklessly cause the death of James Polites on August 5,  
17 1994?" Now I'll give you the law on each one of these, all  
18 right? So you'll get that. But before I do that I want -- I  
19 want to now address the legal concept of the accomplice  
20 liability. Now keeping in mind that accomplice liability --  
21 put the sheets away. Close them up, put them away; I don't  
22 want you distracted by them, or at least turn them over.

23 Each count or each charge in the indictment this  
24 legal concept is applicable to, every one of them individually.  
25 Not -- I'm going to give it to you now before we get into the

## The Court's Charge to the Jury

122

1 murder one only because it's in the middle of the charge and I  
2 thought I would give it to you at this time, but I'm not  
3 singling it out, this charge of accomplice liability to apply  
4 only to the murder or only to the felony murder charge. It  
5 applies to the kidnapping charge, it applies to the robbery  
6 charge, it applies to the possession of the -- of the weapons  
7 charge too. All right? And when I read it to you it will  
8 probably make a little -- it will probably be clearer to you as  
9 an accomplice.

10 Now the jury will -- the State alleges that the  
11 defendant is legally responsible for the criminal conduct of  
12 Ivy Demolena and Thomas Christopher James in violation of the  
13 law which reads in part as follows. See an accomplice, the  
14 theory of the State is that Ms. Farthing was an accomplice of  
15 these other individuals and therefore is guilty of them.

16 Now, "A person is guilty of an offense if it is  
17 committed by his own conduct or the conduct of another person  
18 for whom he is legally accountable or both. A person is legally  
19 accountable for the conduct of another person when," and I'm  
20 going to use she here because the defendant is a female, "when  
21 she is an accomplice of such other person in the commission of  
22 an offense. A person is an accomplice of another person in the  
23 commission of an offense if with the purpose of promoting or  
24 facilitating the commission of the offense she aids or agrees  
25 or attempts to aid such other person in planning or committing

## The Court's Charge to the Jury

123

1 it."

2 Now this provision of the law means that not only is  
3 the person who actually commits the criminal act responsible  
4 for it, but one who is legally accountable as an accomplice is  
5 also responsible. Now this responsibility as an accomplice may  
6 be equal and the same as he or she who actually committed the  
7 crime, or they -- or there may be responsibility in a different  
8 degree depending on the circumstances as you may find them to  
9 be. I'll further explain this distinction to you in a moment.

10 Now in this case the State alleges that the defendant  
11 is equally guilty of the crimes committed by Ivy Demolena and  
12 Thomas Christopher James because she acted as his or her  
13 accomplice with the purpose that the specific crimes charged be  
14 committed.

15 So in order to find the defendant guilty of the  
16 specific crimes charged the State must prove beyond a  
17 reasonable doubt the following elements. First, that Ivy  
18 Demolena and/or Thomas Christopher James committed the crimes  
19 of kidnapping, armed robbery, with regard to James Hippman, and  
20 of the course the kidnapping, armed robbery and murder of James  
21 Polites, possession of firearms for unlawful purposes without a  
22 permit, that they committed those crimes, Demolena and Thomas  
23 James or Christopher James. I'll shortly explain to you -- I  
24 have explained to you those elements already.

25 Secondly the State must prove to you beyond a



## The Court's Charge to the Jury

124

1 reasonable doubt that this defendant Ms. Farthing did aid or  
2 agree to aid him or her in planning or committing those crimes,  
3 it or them meaning each crime separately when you consider them  
4 separately.

5 Third, the State must prove beyond a reasonable doubt  
6 that Ms. Farthing's purpose was to promote and facilitate the  
7 commission of the offense or offenses.

8 Fourth, that Ms. Farthing possessed a criminal state  
9 of mind that is required to be proved against the person who  
10 actually committed the criminal act. She had the same state of  
11 mind that is required of the person who committed the actual  
12 crime. Remember that one acts purposely with respect to his or  
13 her conductor the result thereof if it is his or her conscious  
14 object to engage in conduct of that nature or to cause such a  
15 result.

16 The word aid means to assist, support or supplement  
17 the efforts of another. Agree to aid means to encourage by  
18 promise of assistance or support.

19 Now if you find that the defendant, Ms. Farthing,  
20 with the purpose of promoting or facilitating the commission of  
21 the offense or offenses aided or agreed to attempted to aid him  
22 or her, meaning Ivy Demolena or Christopher James in planning  
23 or committing them or each crime or all the crimes, any one of  
24 the crimes, then you should consider her as if she committed  
25 the crimes herself or the crime herself. And again, I -- I

## The Court's Charge to the Jury

125

1 stress that the accomplice status should be considered  
2 separately as to each charge.

3 To prove the defendant's criminal liability the State  
4 does not have to prove her accomplice status by direct evidence  
5 of a formal plan to commit a crime. There does not have to be  
6 a verbal agreement by all who are charged. The proof may be  
7 circumstantial; participation and agreement can be established  
8 from conduct as well as spoken words.

9 Now mere presence at or near the scene does not make  
10 one a participant in the crime nor does the failure of a  
11 spectator to interfere make her a participant in the crime. It  
12 is however, a circumstance to be considered with the other  
13 evidence in -- in determining whether she was present as an  
14 accomplice. Presence is not in itself conclusive evidence of  
15 that fact. To constitute guilt there must exist a community of  
16 purpose and actual participation in the crime committed.

17 Now mere -- while mere presence at the scene of the  
18 perpetration of a crime does not render a person a participant  
19 in it, proof that one is present at the scene of the commission  
20 of the crime without disapproving or approving or opposing it  
21 is evidence from which in connection with other circumstances  
22 it is possible for a jury to infer that she assented thereto,  
23 lent to it her continuance and approval and was thereby aiding  
24 the same. It depends upon the totality of the circumstances as  
25 those circumstances appear from the evidence.

## The Court's Charge to the Jury

126

1           Now an accomplice may be convicted on proof of the  
2 commission of a crime or of her complicity therein even though  
3 the person who is -- who it is claimed committed the crime has  
4 not been prosecuted or has been convicted of a different  
5 offense or degree of offense or has an immunity from  
6 prosecution or conviction or has been acquitted.

7           Remember that this defendant can be held to be an  
8 accomplice with equal responsibility only if you find as a fact  
9 that she possessed the criminal state of mind that is required  
10 to be proved against a person or persons who actually committed  
11 the criminal act.

12           So in order to convict the defendant as an accomplice  
13 to a specific crime, whether it's kidnapping, robbery, murder,  
14 aggravated manslaughter or reckless manslaughter or possession  
15 of the guns or felony murder, you must find that the defendant  
16 had the purpose to participate in that particular crime. You  
17 must find that the defendant had the purpose to participate in  
18 that particular crime. She must act with the purpose of  
19 promoting or facilitating the commission of the substantive  
20 crime that -- with which she is charged. It's not -- it is not  
21 sufficient to prove only that the defendant had knowledge that  
22 another person was going to commit the crime charged. The  
23 State must prove that it was the defendant's conscious object  
24 that the specific conduct charged be committed.

25           In sum, in order to find the defendant guilty of

## The Court's Charge to the Jury

127

1 committing the crimes of murder, armed robbery, kidnapping,  
2 possession of a handgun with an unlawful purpose, the State  
3 must prove each of the following elements beyond a reasonable  
4 doubt. One, that Ivy Demolena and/or Thomas Christopher James  
5 committed the crimes of murder, kidnapping, armed robbery,  
6 possession of a firearm with unlawful purpose or felony murder.

7 Now you could -- the State could prove that Ivy  
8 Demolena and/or Thomas James committed the crime of murder  
9 purposely and knowingly. For this defendant under an  
10 accomplice liability theory to be found guilty of purposely --  
11 of purpose and knowing murder she must have the same state of  
12 mind that Ivy Demolena and Thomas Christopher James had, those  
13 who were alleged to have been the perpetrators of the crime.

14 Secondly, that the defendant did -- secondly the  
15 State must prove that the defendant did aid or agree or attempt  
16 to aid them in planning or committing it or them; that's  
17 robbery, kidnapping, et cetera, and murder.

18 Third, that the defendant's purpose was to promote or  
19 facilitate the commission of the offenses, and fourth, that the  
20 defendant possessed a criminal state of mind that is required  
21 to be proved against the person who actually committed the  
22 criminal act. And you -- you consider each crime separately.

23 If you find that the State has proved each one of the  
24 elements as described above beyond a reasonable doubt then you  
25 must find the defendant guilty of these charges, depending it's

## The Court's Charge to the Jury

128

1 -- find him guilty of -- of the charge, whatever it is. You're  
2 going to go each one separately.

3 If on the other hand you find that the State has  
4 failed to prove one or more of these elements beyond a  
5 reasonable doubt then you must find the defendant not guilty of  
6 that particular charge.

7 Now as I have previously instructed, any verdicts  
8 rendered must be unanimous; all 12 jurors must agree as to the  
9 guilty or the not -- to guilty or not guilty.

10 Now as I have previously indicated you will initially  
11 consider whether the defendant should be found guilty or not  
12 guilty of acting as an accomplice of Ivy Demolena and/or Thomas  
13 Christopher James with full and equal responsibility for the  
14 specific crime charged. If you find the defendant guilty of  
15 the specific crime or the specific charge then you need not  
16 consider any lesser charge. If however, you find the defendant  
17 not guilty of acting as an accomplice of Ivy Demolena and/or  
18 Thomas Christopher James on a specific crime charged then you  
19 should consider whether the defendant did act as an accomplice  
20 of Ivy Demolena and Thomas -- and/or Thomas James -- Thomas  
21 Christopher James but with the purpose of promoting or  
22 facilitating the commission of a -- of some lesser offense than  
23 the actual crime charged in the indictment. That's when we're  
24 talking about murder. We're talking about aggravated  
25 manslaughter and reckless manslaughter.

## The Court's Charge to the Jury

129

1           Now the law recognizes that two or more persons may  
2 participate in the commission of an offense but each may  
3 participate therein with a different state of mind. That's the  
4 issue and that's one of the main issues in this case. They're  
5 all main issues, but that's an issue that you have to decide.  
6 Our law recognizes that two or more persons that participate in  
7 the commission of an offense but each may participate therein  
8 with a different state of mind. The liability or  
9 responsibility of each participant for any ensuing offense is  
10 dependent on her own state of mind and not anyone else's.  
11 Guided by these legal principles, and if you have found the  
12 defendant not guilty of a specific crime charged you should  
13 then consider whether the defendant is guilty or not guilty of  
14 an -- as an accomplice on a -- on a lesser included offense or  
15 a lesser charge. That is aggravated manslaughter, reckless  
16 manslaughter, there's criminal -- and criminal restraint which  
17 is the lesser included of the offense of kidnapping and second  
18 degree robbery as lesser included in the charge of first degree  
19 robbery.

20           Now I've explained the elements of -- of these  
21 offenses to you already. In considering whether a defendant is  
22 guilty or not guilty as an accomplice on this -- on these  
23 lesser included offenses or on lesser included offenses  
24 remember that each person who participates in the commission of  
25 an offense may do so with a different state of mind and the

## The Court's Charge to the Jury

130

1 liability or responsibility of each person is dependent on his  
2 or her own state of mind and no one else's. So therefore, in  
3 order to find the defendant guilty of the lesser included  
4 offense of aggravated manslaughter, reckless manslaughter,  
5 criminal restraint or second degree robbery the State must  
6 prove beyond a reasonable doubt one, that Ivy Demolena and/or  
7 Thomas Christopher James did commit the crimes of say murder,  
8 armed robbery and kidnapping as alleged in the indictment, or  
9 the lesser included offenses of aggravated manslaughter,  
10 reckless manslaughter, criminal restraint or -- or robbery, and  
11 secondly that this defendant did aid or agree or attempted to  
12 aid them in planning or committing the lesser included offense  
13 of aggravated manslaughter or reckless manslaughter, criminal  
14 restraint or robbery. And that third, that this defendant's  
15 purpose was to promote or facilitate the commission of these  
16 less -- of the lesser included offense. And fourth, that the -  
17 - this defendant Jamie Farthing possessed the criminal state of  
18 mind that is required for the commission of the lesser included  
19 offense.

20 Now if you find that the State has proven each of the  
21 -- of these elements beyond a reasonable doubt then you must  
22 find the defendant guilty. If on the other hand that the State  
23 has failed to prove one or more of these elements beyond a  
24 reasonable doubt then you must find the defendant not guilty.  
25 As I have previously indicated, our verdict must be unanimous;



## The Court's Charge to the Jury

131

1 all 12 jurors must agree as to the -- as to guilty or not  
2 guilty. That's accomplice liability.

3 Now I'm going to go into the two remaining charges  
4 which is the murder charge, also it's lesser included offenses,  
5 and the felony murder. This is charge number five on your  
6 sheets.

7 The defendant in the indictment is charged that on  
8 August 5, 1994 in Edgewater did purposely or knowingly cause  
9 the death or serious bodily injury resulting in the death of  
10 James Polites or Polites contrary to the provisions of the law.

11 Now here's the law. "A person is guilty of murder if  
12 he or she purposely causes death or serious bodily injury  
13 resulting in death, or," -- it's not and, it's or, "or  
14 knowingly causes death or serious bodily injury resulting in  
15 death."

16 Now in order for you to find the defendant guilty of  
17 murder the State is required to prove each of the following  
18 elements beyond a reasonable doubt. Now remember that the  
19 State's theory here is accomplice liability, okay, in this --  
20 in each one of these charges.

21 The State must prove one, that the defendant caused  
22 James Polites's death or serious bodily injury resulting in his  
23 death, and two, that the defendant did so purposely or  
24 knowingly. Those are the two elements; caused his death or  
25 caused bodily injury resulting in his death and did so

## The Court's Charge to the Jury

132

1 purposely or knowingly, those are the elements.

2 Now one of the elements the State must prove beyond a  
3 reasonable doubt is that the defendant acted purposely or  
4 knowingly. Now a person who causes another -- another's death  
5 does so purposely -- again we get into that word purposely --  
6 when it is the defen -- the person's conscious object to cause  
7 death or serious bodily injury resulting in death.

8 A person who causes another person's -- or another's  
9 death does so knowingly when the person is aware that it is  
10 practically certain that his or her conduct will cause death or  
11 serious bodily injury resulting in death.

12 The nature of the purpose or knowledge with which the  
13 defendant acted towards James Polites is a question of fact for  
14 you, the jury, to decide. Purpose and knowledge are conditions  
15 of the mind which cannot be seen and can only be determined by  
16 inferences from conduct, words or acts. It is not necessary  
17 for the State to produce a witness or witnesses who could  
18 testify that the defendant stated, for example, that her  
19 purpose was to cause death or serious bodily injury resulting  
20 in death, or that she knew that her conduct would cause death  
21 or serious bodily injury resulting in death. It is within your  
22 power to find that proof of purpose or knowledge has been  
23 furnished beyond a reasonable doubt by inferences which may  
24 arise from the nature of the acts and the surrounding  
25 circumstances. Such things as the place where the acts

## The Court's Charge to the Jury

133

1 occurred, the weapon used, the location, the number and nature  
2 of wounds inflicted and all that was done or said by the  
3 defendant preceding, connected with and immediately succeeding  
4 the events leading to the death of James Polites are among the  
5 circumstances to be considered.

6 Now although the State must prove that the defendant  
7 acted either purposely or knowingly the State is not required  
8 to prove a motive. If the State has proved the essential  
9 elements of the offense beyond a reasonable doubt the defendant  
10 must be found guilty of that offense regardless of the  
11 defendant's motive or lack of motive. If the State however,  
12 has proved a motive you may consider it insofar as it gives  
13 meaning to other circumstances and on the other hand you may  
14 consider the absence of motive in weighing whether or not the  
15 defendant is guilty of the crime charged.

16 Now the other element that the State must prove  
17 beyond a reasonable doubt is that the defendant caused James  
18 Polites -- Polites' death or serious bodily injury resulting in  
19 death. Remember I mentioned to you serious bodily injury means  
20 bodily injury which creates a substantial risk of death or  
21 which causes serious permanent disfigurement or protracted loss  
22 or impairment of a function of any bodily member or organ.  
23 Whether the killing is committed purposely or knowingly causing  
24 death or serious bodily injury in death must be within the  
25 design or contemplation of the defendant.

## The Court's Charge to the Jury

134

1           Now if you determine that the State has proven beyond  
2 a reasonable doubt that the defendant purposely or knowingly  
3 caused the death, serious -- or serious bodily injury resulting  
4 in death you must find the defendant guilty of murder.

5           If on the other hand you determine that the State has  
6 not proven beyond a reasonable doubt that the defendant  
7 purposely or knowingly caused death or serious bodily injury  
8 resulting in death then you must find her not guilty of murder  
9 and go on to consider whether the defendant should be convicted  
10 of crimes of aggravated or reckless manslaughter. And that's  
11 the next question on the verdict sheet. In other words, if you  
12 find her not guilty of murder, purposely and knowingly, then  
13 you can consider 5-A and that's aggravated manslaughter.

14           A person is guilty of aggravated manslaughter if she  
15 recklessly causes the death of another person under  
16 circumstances manifesting extreme indifference to human life.

17           In order for you to find the defendant guilty of  
18 aggravated manslaughter the State is required to prove each of  
19 the following elements beyond a reasonable doubt. One, that  
20 the defendant caused James Polites' death and that two, that  
21 the defendant did so recklessly, and three that the defendant  
22 did so without cir -- under circumstances manifesting extreme  
23 indifference to human life.

24           One element the State must prove beyond a reasonable  
25 doubt is that the defendant acted recklessly. Now a person who

## The Court's Charge to the Jury

135

1 causes another's death does so recklessly when he or she is  
2 aware of and consciously disregards a substantial and  
3 unjustifiable risk that death will result from his or her  
4 conduct. The risk must be of such a nature and degree that  
5 considering the nature and the purpose of defendant's conduct  
6 and the circumstances known to the defendant, his or her  
7 disregard of that risk is a gross deviation from the standard  
8 of conduct that a reasonable person would follow in the same  
9 situation. In other words, you must find that the defendant  
10 was aware of and consciously disregarded the risk of causing  
11 death.

12 If you find that the defendant was aware of and  
13 disregarded the -- the risk of causing death you must determine  
14 whether the risk that she or he disregarded was substantial and  
15 unjustifiable. In doing so you must consider the nature and  
16 the purpose of the defendant's conduct and the circumstances  
17 known to the defendant, and you must determine whether in light  
18 of those factors defendant's disregard of that risk was a gross  
19 deviation from the conduct a reasonable person would have  
20 observed in the defendant's situation.

21 Another element the State must prove beyond a  
22 reasonable doubt is that the defendant acted under  
23 circumstances manifesting extreme indifference to human life.  
24 The phrase "under circumstances manifesting extreme  
25 indifference to human life" does not focus on the defendant's

## The Court's Charge to the Jury

136

1 state of mind but on the circumstances under which you find he  
2 or she acted.

3 If in light of all the evidence you find that the  
4 defendant's conduct resulted in a probability as opposed to a  
5 mere possibility of death then you may find that he or she  
6 acted under circumstances manifesting extreme indifference to  
7 human life.

8 On the other hand if you find that his or her conduct  
9 resulted in only a possibility of death then you may acquit him  
10 or her of aggravated manslaughter and consider the offense of  
11 reckless manslaughter which I will explain to you shortly. And  
12 that's 5-B.

13 The final element that the State must prove beyond a  
14 reasonable doubt is that the defendant caused James Polites'  
15 death. Now you must find that James Polites would not have  
16 died but for the defendant's action.

17 If after consideration of all the evidence you are  
18 convinced beyond a reasonable doubt that the defendant  
19 recklessly caused James Polites' under circumstances  
20 manifesting extreme indifference to human life then your  
21 verdict should be guilty of aggravated manslaughter.

22 If however, after considering -- consideration of all  
23 of the evidence you are not convinced beyond a reasonable doubt  
24 that the defendant recklessly caused James Polites' death under  
25 circumstances manifesting extreme indifference to human life

## The Court's Charge to the Jury

137

1 you must find the defendant not guilty of aggravated  
2 manslaughter and go on to consider whether the defendant should  
3 be convicted of reckless manslaughter.

4 A person is guilty of reckless manslaughter if she  
5 recklessly causes the death of another person, he or she. In  
6 order for you to find the defendant guilty of reckless  
7 manslaughter the State is required to prove each of the  
8 following elements beyond a reasonable doubt. One, that the  
9 defendant caused James Polites' death, two, that the  
10 defendant did so recklessly.

11 The State must prove, one element the State must  
12 prove beyond a reasonable doubt is that the defendant acted  
13 recklessly. Now let's talk about reckless. A person who  
14 causes another person -- another's death does so recklessly  
15 when he or she is aware of and consciously disregards a  
16 substantial and unjustifiable risk that death will result from  
17 his or her conduct. The risk must be of such a nature and  
18 degree that considering the nature and purpose of the  
19 defendant's conduct and the circumstances known to the  
20 defendant, his or her disregard of that risk is a gross  
21 deviation from the standard of conduct that a reasonable person  
22 would have in the same situation. In other words, you must  
23 find the defendant was aware of and consciously disregarded the  
24 risk of causing death. If you find that the defendant was  
25 aware of and disregarded the risk of causing death you must



## The Court's Charge to the Jury

138

1 determine whether the risk that he or she disregarded was  
2 substantial and unjustifiable. In doing so you must consider  
3 the nature and purpose of the defendant's conduct and the  
4 circumstances known to the defendant and you must determine  
5 whether in light of those factors the defendant's disregard of  
6 that risk was a gross deviation from the conduct of a  
7 reasonable person would have observed in the defendant's  
8 situation. You must find that the defendant -- that the --  
9 that James Polites would not have died but for the defendant's  
10 conduct.

11 If after consideration -- if after consideration of  
12 all the evidence you are convinced beyond a reasonable doubt  
13 that the defendant recklessly caused James Polites' death then  
14 your verdict should be guilty of reckless manslaughter. If  
15 however, after considering -- consideration of all the evidence  
16 you are not convinced beyond a reasonable doubt the defendant's  
17 -- the defendant recklessly caused James Polites' death you  
18 must find the defendant not guilty of reckless manslaughter.

19 That's the charge on murder with the lesser included  
20 offense, all right?

21 Counts six and seven, the next page. The question  
22 is, how do you find as to the charge that Jamie Farthing while  
23 in the course of committing the crime of kidnapping she or  
24 another person did cause the death of James Polites on August 5  
25 and while in the course of committing -- and number seven -- in

## The Court's Charge to the Jury

139

1 the course of committing robbery she or another person did  
2 cause the death of James Polites on August 5. All right,  
3 that's felony murder now.

4 The defendant is charged in counts six and seven with  
5 felony murder in violation of the law. And I just -- well I  
6 read to you the indictment. The State does not contend that  
7 the defendant herself killed James Polites -- James Polites.  
8 The State charges that James Polites was killed while the  
9 defendant, with one or more other persons, was engaged in the  
10 commission of robbery, that's as to count six. The State  
11 contends that with regard -- that the State contends with  
12 regard to count seven that James Polites was not killed while  
13 the defendant was -- charges that James Polites was killed when  
14 the defendant was, with one or more other persons, was engaged  
15 in the commission of the crime of kidnapping. So we have two  
16 felony charges. And that's why I'm going to give you this, you  
17 apply it to both of those counts.

18 The law reads as follows. "Criminal homicide  
19 constitutes murder when it is committed when the actor either  
20 acting alone or with one or more other persons is engaged in  
21 the commission of robbery or kidnapping," either one, "and in  
22 the course of such crime or the immediate flight thereafter any  
23 person causes the death of a person other than one of the  
24 participants."

25 Now under the law it does not matter that the act

## The Court's Charge to the Jury

140

1 which caused death was committed by a participant in the crime  
2 of robbery or kidnapping in this case, it does not matter the  
3 act which caused the death was committed by a participant in  
4 the crimes other than the defendant, or even by someone other  
5 than the participant nor does it generally matter that the act  
6 which caused death was committed recklessly or unintentionally  
7 or accidentally. Each participant in the crime of, either --  
8 in this case it's robbery and kidnapping -- each participant in  
9 the crime, whether -- whether the participant himself or  
10 herself caused the death or not, would be guilty of the felony  
11 murder. Each participant in the crime of robbery, whether the  
12 participant herself caused the death or not would be guilty of  
13 felony murder -- murder. Read again, each participant in the  
14 crime of kidnapping, whether the participant herself caused the  
15 death or not, would be guilty of felony murder.

16 In order for you to find the defendant guilty of  
17 felony murder in this case the State is required to prove  
18 beyond a reasonable doubt that all of the evidence in the case  
19 which is each of the following elements of the offense charged.  
20 One, that on or about August 5, 1994 the defendant was engaged  
21 in the commission of robbery, and that's as to charge seven.  
22 Charge six, the State must prove that on or about August 5,  
23 1994 the defendant was engaged in the commission of kidnapping.

24 The second element the State must prove as to each of  
25 those charges, that the death of James Polites was caused at

## The Court's Charge to the Jury

141

1 some time within the course of the commission of that crime  
2 including its aftermaths of flight and concealment efforts.  
3 The first element requires the State to prove beyond a  
4 reasonable doubt that the defendant was engaged in the  
5 commission of the crime of robbery and/or -- or kidnapping. And  
6 I've already explained to you the elements that are required  
7 for robbery and/or kidnapping.

8           The second element requires that the State, to  
9 establish that the -- that the victim's death was caused during  
10 the commission of the robbery or the commission of kidnapping,  
11 in order to meet it's burden of proof in this regard, the State  
12 must prove beyond a reasonable doubt one, that -- that but for  
13 the defendant's conduct or the conduct of one or more others --  
14 or the conduct of one or more others with whom the defendant  
15 participated in the commission of the robbery or the commission  
16 of the kidnapping the victim would not have died. In other  
17 words, that the victim's death would not have occurred without  
18 the commission of the robbery or that the victim's death would  
19 not have occurred without the commission of the kidnapping.  
20 Two, the State must prove beyond a reasonable doubt that the  
21 victim's death was a probable consequence of the commission of  
22 robbery or flight after committing the robbery, or that the --  
23 the victim's death was a probably consequence of the commission  
24 or the flight thereafter committing the crime of kidnapping.

25           In order for the death to be a probable consequence

## The Court's Charge to the Jury

142

1 of robbery or -- and/or kidnapping, the death must not have  
2 been too remote or too accidental in its occurrence, or too  
3 dependent on another's volitional acts to have a just bearing  
4 on the defendant's liability for the gravity of her offense.  
5 In other words, you must decide that the State has proven  
6 beyond a reasonable doubt that under all the circumstances the  
7 death did not occur at such an unexpected and unusual manner  
8 that it would be unjust to find the defendant responsible for  
9 the death.

10 Now there was some reference made by both counsels  
11 with regard to what refer to affirmative defenses when it comes  
12 to felony murder. Under the statute which applies here it is  
13 an affirmative defense to the charge of felony murder if there  
14 is proof in the case that the defendant a) did not commit the  
15 homicidal act or in any way solicit, request, command, cause or  
16 aid the commission thereof, 2) the defendant was not armed with  
17 a deadly weapon or an instrument, article or substance readily  
18 capable of causing death or serious physical injury, and of a  
19 sort not ordinarily carried in public places by law abiding  
20 persons. Actually what we have in this case is that the -- the  
21 proof, affirmative offense is applicable if the -- if there is  
22 proof that the defendant did not commit the homicidal act, was  
23 not armed with a deadly weapon, 3) had no responsible -- I'm  
24 sorry, strike that. Had no reasonable ground to believe that  
25 any other participant was armed with such a weapon, instrument,

## The Court's Charge to the Jury

143

1 article or substance, so was not reasonably -- had no  
2 reasonable ground to believe that any other participant was  
3 armed with such a weapon, fourth, had no reasonable ground to  
4 believe that any other participant intended to engage in  
5 conduct likely to result in death or serious bodily injury.  
6 Now those are the four. This means that the affirmative  
7 defense is not available to a defendant unless there is  
8 evidence in the case supporting all of the four requirements,  
9 not merely one or two or three of them. If there is such  
10 supporting evidence either in the State's proofs or as  
11 presented in behalf of the defendant then it is incumbent upon  
12 the State to negate these -- this evidence by proof beyond a  
13 reasonable doubt however, it is not necessary that all four  
14 requirements be negated since the defense is not available to a  
15 defendant unless the evidence supports all four of the  
16 requirements. It is sufficient for the State in such case to  
17 present proof beyond a reasonable doubt negating any one of  
18 them.

19 Now if you find after a consideration of all of the  
20 evidence that the State has proved to your satisfaction beyond  
21 a reasonable doubt each of these elements of the offense  
22 charged as I have just explained them to you, that is 1) that  
23 the defendant was engaged in the commission of a robbery or --  
24 or kidnapping, 2) that the death of James Polites was caused at  
25 some time within the course of the commission of that crime,

## The Court's Charge to the Jury

144

1 including its aftermaths of flight and concealment efforts,  
2 then you will find the defendant guilty of felony murder. Now  
3 on the other hand if you find that the State has failed to  
4 prove to your satisfaction beyond a reasonable doubt any one or  
5 more of these elements of the crime charged as I have explained  
6 them -- explained them, then you must find the defendant not  
7 guilty of felony murder.

8 Now keep in mind, and I -- and I instruct you and  
9 advise you that if the State has failed to prove beyond a  
10 reasonable doubt that any participant caused the death of the  
11 victim then the defendant should be found not guilty of all  
12 charges -- of all charged homicide offenses.

13 And if you find beyond a reasonable doubt that any  
14 participant did cause the death of the victim but that the  
15 State has failed to prove that the defendant was then engaged  
16 as an accomplice in the course of the commission of the robbery  
17 or kidnapping then you should proceed to consider whether the  
18 defendant as an accomp -- as an accomplice -- as an accomplice  
19 purposely, knowingly or recklessly caused the death of the  
20 victim, James Polites.

21 All right, that's the law and I've covered each one  
22 of the questions. I'm losing my voice.

23 THE COURT OFFICER: Ladies and gentlemen, if you'd  
24 just (inaudible) please?

25 THE COURT: Now if you believe any witness or party



1 wilfully or knowingly testified falsely to any material fact in  
2 the case with the intent to deceive you, you may give such  
3 weight to his or her testimony as you may deem it is entitled.  
4 You may believe some of it or you may in your discretion  
5 disregard all of it.

6 Now there are a number of offenses charged in the  
7 indictment. They are separate offenses, by separate counts in  
8 the indictment. The defendant is entitled to have her guilty  
9 or innocence separately considered on each count by the  
10 evidence which is relevant and material to that particular  
11 count or charge based on the law as I give it to you.

12 All right, there's a few other things I just want to  
13 mention now and before you go in to deliberate. First of all,  
14 there was -- you've already heard evidence that a witness in  
15 particular, the defendant's father Paul Farthing, was a witness  
16 who had previously been convicted of a crime. And this  
17 testimony may only be used in determining the credibility or  
18 believability of this witness' testimony. The jury has a right  
19 to consider whether a person who was previously -- who has  
20 previously failed to comply with society's rules as  
21 demonstrated through a criminal conviction would be more likely  
22 to ignore the oath requiring truthfulness on -- on the witness'  
23 -- on the witness stand then a law abiding citizen. Now you  
24 may consider in determining this issue, the nature and degree  
25 of the prior conviction and when it occurred. I think he said

1 he had pointed a -- a gun at his former wife or something or  
2 other and he explained that he did that to get the police  
3 attention. So you can consider that, but you -- for the  
4 credibility purpose only; no propensity, you're not draw any --  
5 any inferences that there's a propensity within the family to  
6 crime because it was her father, only for the credibility  
7 issue. You are not however, obliged to change your opinion as  
8 to the credibility of this witness simply because of a prior  
9 conviction. It is evidence that you may consider along with  
10 all the other factors we previously discussed to determine  
11 credibility of a witness.

12 We had some testimony of doctors; Dr. Apolito, Dr.  
13 Simring and Dr. Kleinman, the psychologist. And remember, they  
14 were considered to be experts and they gave opinions as to the  
15 mental condition with regard to the defendant. Now as a  
16 general rule as I explained to you, of evidence, a general rule  
17 of evidence is that witnesses can -- can testify only as -- as  
18 to facts known by them. This rule ordinarily does not permit  
19 the opinion of a witness to be received as evidence however, an  
20 exception to this rule exists in the case of an expert witness  
21 who may give his opinion as to any manner in which he is versed  
22 which is material to the case. In legal terminology, an expert  
23 witness.

24 An expert witness is a witness who has some special  
25 knowledge, skill, experience or training that is not possessed

## The Court's Charge to the Jury

147

1 by the ordinary juror and who thus -- thus may able to provide  
2 assistance to the jury in its fact finding duties. Now in this  
3 case I mentioned we had Dr. Apolito, Dr. Simring and Dr.  
4 Kleinman who were called as experts and they testified. Now  
5 you're not bound by such experts' opinions, but you should  
6 consider each opinion and give it the weight to which you deem  
7 it is entitled whether that be great or slight. And you may  
8 reject it.

9           Now in examining each opinion you may consider the  
10 reasons give for it, if any, and you may also consider the  
11 qualifications and the credibility of the expert. It is always  
12 within the special function of the jury to decide whether the  
13 facts in which he answered as an expert is based -- is based  
14 actually exists or is answered -- I'm sorry, on which his  
15 answer of the expert is based actually exists, whether those  
16 facts exist. And the value or weight of the opinion of the  
17 expert is dependent upon and no stronger than the facts on  
18 which it is predicated.

19           Now in examining an expert witness, counsel may  
20 propound to him a type of question known in the law as a  
21 hypothetical question and there was some of that used here.  
22 Take for example this and suppose this, this and this, what  
23 would be your opinion. That's what a hypothetical question is,  
24 you've heard it referred to during the -- the trial. By such a  
25 question the witness is asked to assume to be true a

## The Court's Charge to the Jury

148

1 hypothetical state of facts and to give an opinion based on  
2 that assumption. In permitting such a question the court does  
3 not rule and does not necessarily find that all of the assumed  
4 facts are within the possible range of the evidence. It is for  
5 you, the jury, to find from all the evidence whether or not the  
6 facts assumed in the hypothetical question or questions have  
7 been proved. And if you should find that any assumption in  
8 such a question has not been proved you are to determine the  
9 affect of the -- of the failure of proof on the value and the  
10 weight of the opinion, of the expert opinion based on that  
11 assumption.

12 Now in resolving any conflict that may exist in the  
13 testimony of the expert witnesses in this case you must weigh  
14 one expert's opinion against that of the other and you must  
15 consider the reasons given by one as compared by those of the  
16 other and you should consider the relative credibility and  
17 knowledge of the experts who have testified. Thereupon, you  
18 should find in -- thereupon, you should find in favor of that  
19 expert testimony which in your opinions is entitled to the  
20 greater weight. Nevertheless, you must always keep in mind  
21 that the State has the burden of proving the crime and each of  
22 its elements beyond a reasonable doubt. If you should find  
23 that the State's expert is more credible than the defense  
24 expert you must still consider whether the conflict of expert  
25 testimony may have created reasonable doubt concerning the

## The Court's Charge to the Jury

149

1 crime or one of its elements.

2 Which leads me to the next area which is referred to  
3 as diminished capacity. And the defense has presented a --  
4 what we refer to as a diminished capacity defense. Evidence as  
5 -- evidence that the defendant suffered from a mental disease  
6 or defect has been -- has been produced. You must consider  
7 such evidence in determining whether or not the State has  
8 proved beyond a reasonable doubt that the defendant acted  
9 purposely or knowingly or recklessly as I instructed you  
10 earlier. The requirement that the defendant acted purposely or  
11 knowingly or recklessly is an essential element of the offenses  
12 charged. If you find the existence of a mental disease or  
13 defect then you must decide whether the prosecution has  
14 sustained its burden of proving that the defendant acted  
15 purposely or knowingly or recklessly. The prosecution bears the  
16 burden of proving beyond a reasonable doubt that the  
17 defendant's mental disease or defect did not negate her  
18 capacity to form a purposeful or knowing or reckless state of  
19 mind. In other words, assuming that you find that there was a  
20 mental disease or defect that was capable of preventing the  
21 defendant from acting with the mental state required, the  
22 prosecution must prove that the defendant acted purposely or  
23 knowingly or purpose -- or recklessly.

24 If the evidence of mental disease or defect or any  
25 other evidence or lack of evidence prevents the State from

## The Court's Charge to the Jury

150

1 carrying its burden of proving beyond a reasonable doubt that  
2 this defendant acted purposely or knowingly or recklessly then  
3 you must find the defendant not guilty of the appropriate  
4 offense, again considering diminished capacity separately with  
5 each charge.

6 If however, you find that the State has proved beyond  
7 a reasonable doubt that the defendant acted purposely or  
8 knowingly or recklessly, depending on the charge, there --  
9 together with all other elements of the offense, then you must  
10 find -- you must convict the defendant of the applicable  
11 defense.

12 There's one other thing, it's flight. There has been  
13 some testimony in the case from which you may infer that the  
14 defendant fled shortly after the alleged commission of the  
15 crime; the defendant denies any flight. The question of  
16 whether the defendant fled after the commission of the crime is  
17 another question of fact for your consideration. Mere  
18 departure from the place where the crime has been committed  
19 does not constitute flight. If you find the defendant fearing  
20 that an accusation or an arrest would be made against her on  
21 the charge involved in the indictment, took refuge in flight  
22 for the purpose of evading the accusation or arrest on that  
23 charge then you may consider such flight in connection with all  
24 the other evidence in the case as an indication or proof of  
25 guilt. Flight may only be considered as evidence of

## The Court's Charge to the Jury

151

1 consciousness of guilt if you should determine that the  
2 defendant's purpose in leaving was to evade accusation or  
3 arrest for the offense charged in the indictment.

4 And finally, now this defendant, Ms. Farthing, in  
5 this case chose not to be a witness. It is the constitutional  
6 right of a defendant to remain silent. I charge you that you  
7 are not to consider for any purpose or in any manner in  
8 arriving at your verdict the fact that the defendant did not  
9 testify, nor should that fact enter into your deliberations or  
10 discussions in any manner at any time. The defendant is  
11 entitled to have the jury consider all of the evidence and she  
12 is entitled to the presumption of innocence even if she does  
13 not testify as a witness.

14 That concludes my instructions as to the principles  
15 of law regarding the offenses charged in the indictment. There  
16 is nothing different in the way a jury is to consider the proof  
17 in a criminal case from that in which all reasonable persons  
18 treat any questions depending upon evidence presented to them.  
19 You are expected to use your good common sense, consider the  
20 evidence for only those purposes for which it has been admitted  
21 and give it a reasonable and fair construction in light of your  
22 knowledge of how people behave. It is the quality of the  
23 evidence, not simply the number of witnesses that control.  
24 Anything that has been marked into evidence cannot -- that has  
25 not been marked into evidence cannot be given to you in the



## The Court's Charge to the Jury

152

1 jury room even though it may have been marked for  
2 identification. Those items marked in evidence can be given to  
3 you. Now there have been references to reports, to written  
4 statements; they are not in evidence, so they will not be  
5 available to you. You rely upon your own recollection, all  
6 right? Police reports too.

7           Very shortly you will go into the jury room to start  
8 your deliberations. You are to apply the law as I have  
9 instructed you to the facts as you find them for the purpose of  
10 arriving at a fair and correct verdict. The verdict must be --  
11 must represent the considered judgment of each juror and must  
12 be unanimous as to each charge. This means all of you must  
13 agree if the defendant is guilty or not guilty on each charge.

14           It is your duty as jurors to consult with one another  
15 and to deliberate with a view of reaching a -- an agreement if  
16 you can do so without violence to individual judgment. Each of  
17 you must decide the case for yourself but do so only after in  
18 impartial consideration of the evidence with your fellow  
19 jurors. Now remember what I said; you are to deliberate and  
20 you come to a conclusion after impartial consideration of the  
21 evidence with your fellow jurors. In the course of your  
22 deliberations do not hesitate to re-examine your own views and  
23 change your opinion if convinced it is erroneous. Do not -- but  
24 do not surrender your honest conviction as to the weight or the  
25 effect of the evidence solely because of the opinion of your

## The Court's Charge to the Jury

153

1 fellow jurors or for the mere purpose of returning a verdict.  
2 You are not partisans now, you are judges, judges of the fact.

3 And as I said, in this case you may return a -- you  
4 must return a verdict on each charge of either guilty or not  
5 guilty. This is a criminal case and therefore your verdict --  
6 verdicts, whatever it -- whatever they be as to the offenses  
7 charged must be unanimous. All 12 who are ultimately chosen as  
8 a deliberating jury must agree on its verdict. You will have a  
9 copy of that verdict that I mentioned to you or you viewed to  
10 assist you. This verdict sheet is not evidence.

11 If during your deliberations you have a question or  
12 feel that you need further assistance or instructions from me,  
13 write your question on a sheet of paper, give it to the Sheriff  
14 -- my Sheriff's office. The foreperson of the jury will do  
15 that and then he will -- he'll be available and he'll turn that  
16 question over to me. I will then go over the question with the  
17 attorneys and I will try to answer you as quickly as possible.  
18 Please be patient. If you do send a question or a note out for  
19 any reason do not disclose where you stand on your  
20 deliberations. Do not tell us, as an example, that you are ten  
21 to two or eight to four on a given charge.

22 If you have reached a unanimous verdict on each  
23 charge, buzz for my officers and the Sheriff's officer will  
24 then bring that information to me and we will bring you back  
25 into the courtroom and receive your verdict here.

Colloquy

154

1 Sidebars, counsel?

2 (SIDEBAR)

3 THE COURT: Any exceptions?

4 MS. BAGLIVI: Judge, I might -- obviously I missed  
5 it, did you charge reasonable doubt?

6 MR. WEICHSEL: I know you charged presumption of  
7 innocence in the beginning.

8 MS. BAGLIVI: Yes, I know, I understand --

9 MR. WEICHSEL: Yeah, he charged it.

10 MS. BAGLIVI: Okay, just -- I am sure you did, it was  
11 all in with everything else, but --

12 THE COURT: Yeah, I did.

13 MS. BAGLIVI: -- I must have just missed it.

14 MR. WEICHSEL: It's one of the first things he  
15 charged.

16 MS. BAGLIVI: Okay.

17 THE COURT: Yeah, I did charge it.

18 MS. BAGLIVI: No other exceptions.

19 THE COURT: Any exceptions?

20 MR. WEICHSEL: No.

21 THE COURT: Okay, let's go to work.

22 (END OF SIDEBAR)

23 THE COURT: I called the attorneys over to ask did I  
24 forget anything. So okay, we're ready to go. Put the 14 names  
25 in the -- in the box and pick two out. Let me get my jury list

## Colloquy

155

1 out.

2 THE COURT OFFICER: Alternate number one is juror  
3 number four, Lisa Geovala (phonetic).

4 THE COURT: You're alternate number one. Why don't  
5 you step down? I guess we don't have any chairs. Why don't  
6 you sit in the front row over there?

7 THE COURT OFFICER: Alternate number two is juror  
8 number 12, Joseph Pelateri (phonetic).

9 THE COURT: You're alternate number two. Ms. Monteck  
10 (phonetic), you are the foreperson of the jury, that's because  
11 you're number one, that's all. It's nothing -- nothing more  
12 than that. It will be your responsibility to lead the  
13 deliberations. It is also your responsibility to tell us what  
14 the verdict is when you -- when the jury has decided it. And  
15 when we ask you to come out with the verdict please resume the  
16 seats that you're in now, ladies and gentlemen, and then we'll  
17 take the verdict from the foreperson. The foreperson then will  
18 -- well I'll ask the questions. What I'll do is, the verdict  
19 sheet that you have, I will go over the questions and you will  
20 answer them as you have them.

21 Now as a foreperson your vote does not carry any  
22 greater weight than any other juror in this -- in the jury  
23 room. It -- we simply designate you as foreperson for  
24 administrative reasons to preside over the deliberations and to  
25 tell us the results. All right?

## Colloquy

156

1           As soon as my officers now are sworn you will be --  
2 you will return to the jury room. Do not begin your  
3 deliberations until the jury verdict sheet has been sent in and  
4 we organize some of the exhibits and get them into you and  
5 again, I keep -- I remind you that all those boxes there, and  
6 there are one, two, three, four, five, six, seven, eight --  
7 eight boxes full of -- filled with evidence and then there's a  
8 lot of charts. I'm going to send in the charts and papers,  
9 those boxes I'll leave them available to you. I think you have  
10 an idea of what's in them. If you want them in there you can  
11 just ask for them. It's up to you; if you want them all in  
12 there I can send them all in, pile them all up if you want to  
13 go through them, or if you have any ideas that you want to see  
14 anything I'll have it right outside the room.

15           Now the alternates, this is for you. You are not  
16 excused, okay? You will be kept in a separate location in case  
17 it becomes necessary to substitute one or both of you for any  
18 one of the jurors that have now been selected. You should not  
19 therefore discuss this case with anyone or between yourselves;  
20 you still can't talk about the case because if one of you go in  
21 then you've discussed it outside of the jury. You can talk  
22 about anything else you want but don't talk about the case. If  
23 it becomes necessary to substitute an alternate I will give you  
24 and the remaining deliberating jurors further instructions of  
25 law at that time, it's not necessary now. If there is a

## Colloquy

157

1 question or a verdict we will bring you back into the courtroom  
2 so that you may depart then, okay?

3 Swear in the officers please?

4 (THE COURT OFFICERS ARE SWORN)

5 All right now, ladies and gentlemen, it's now about  
6 25 minutes to four, it's late. You've had a long day. You can  
7 begin your deliberations and any time you want to break and go  
8 home and come back and deliberate tomorrow again first thing,  
9 that's up to you. I don't intent -- I don't -- I really don't  
10 think you should stay more -- you know, late into the evening  
11 unless you want to. But if you feel that you want to come back  
12 tomorrow at any given time you go in there and get organized.  
13 and you get -- you get an idea of how you will progress. And  
14 if -- you might have a verdict, if you have a verdict today  
15 that's fine. If you want to come back tomorrow we'll available  
16 for you. Okay?

17 Now you may take the case now members of the jury and  
18 render your verdict based on the instructions given to you and  
19 -- in this charge as your conscious, your reason and candid  
20 judgment deems proper. All right, you go down to the jury room  
21 now. If you have anything -- the two alternates, if you have  
22 anything you want to take out go down there now. Do not start  
23 discussions until I sent word into you, all right?

24 (THE JURY IS EXCUSED TO DELIBERATE)

25 THE COURT: Anything else, counsels?

Colloquy

158

1 MS. BAGLIVI: Judge, the only thing is I -- maybe we  
2 should remind the jury that I broke the glass, the champagne  
3 glass that's in the box so nobody sticks their hand in there?  
4 There is broken glass and --

5 THE COURT: Well if they -- if a box is going in  
6 we'll remind them.

7 MS. BAGLIVI: Okay. Mr. Weichsel and I during the  
8 break went through the loose items that I have that were not in  
9 the boxes, they were in my book. Your Sheriff's officer put  
10 them in a folder. All the charts and pictures are right there,  
11 only the ones that were marked into evidence are there and all  
12 of the boxes we took out anything that was not -- like the  
13 tapes, the videotapes and things of that nature, they're all  
14 out of the boxes and downstairs.

15 THE COURT: Is there any -- any objection on your  
16 part as to the way I've elected to proceed about the boxes? Do  
17 you want them to all go into the jury room or do you have any  
18 problem with that?

19 MS. BAGLIVI: Judge, I don't -- it doesn't really  
20 concern me, the only concern I have is if at the end of the day  
21 they don't reach a verdict if you could store them, maybe lock  
22 them in the holding cell; I would have no objection to that.  
23 You know, if you want to leave them in the hallway and they  
24 want to just ask for boxes I don't have a problem with that. I  
25 --



Colloquy

159

1 THE COURT: All right.

2 MR. WEICHSEL: I don't have any problem with that,  
3 judge. Judge, I'm supposed to be --

4 THE COURT OFFICER: Quiet in the courtroom please.

5 MR. WEICHSEL: I'm supposed to be in Paramus  
6 Municipal Court at 4:30. Do you think you can have somebody  
7 from the court call to tell I'll be late?

8 THE COURT: Who is the judge there?

9 MR. WEICHSEL: Bushman.

10 THE COURT: Well they go all night, don't they?

11 MR. WEICHSEL: What?

12 THE COURT: They go all night?

13 MR. WEICHSEL: Well I don't know that they go all  
14 night on Mondays, judge, I think he just has attorney  
15 conferences on Mondays. He probably goes till about --

16 THE COURT: Well I'm not going to call, you call  
17 them.

18 MR. WEICHSEL: Okay.

19 THE COURT: You call and tell them you have a jury  
20 out and if there's any problem then I'll -- I'll deal with it.

21 MR. WEICHSEL: Okay, fine.

22 THE COURT: All right? We'll take a five minute  
23 break.

24 (RECESS)

25 (THE COURT HEARS OTHER MATTERS)

Colloquy

160

1 THE COURT: Bring the jury up please? Bring the jury  
2 up. They're coming back tomorrow.

3 MS. BAGLIVI: What time?

4 THE COURT: We'll find out.

5 THE COURT OFFICER: Your Honor, they've indicated to  
6 me they already have some markings on the verdict sheet and I  
7 had them seal it and I had juror number one sign across the  
8 fold.

9 (PAUSE - THE JURY ENTERS THE COURTROOM)

10 THE COURT: I have a note that you want to start  
11 tomorrow at 9:15, ready to go at 9:30. Is that right?

12 THE JURORS: Yes, sir.

13 THE COURT: All right, that's fine, there's no  
14 problem with that, it's been a long day for all of us. So I'll  
15 ask -- and I have your verdict sheet that's sealed in here and  
16 I'll keep that. Don't discuss the case now with anybody at  
17 home, all right? And that also goes for the alternates. I  
18 expect you two to be back here tomorrow too. You are not to  
19 report to the jury room, but to -- where -- where are they, are  
20 you down at central jury room?

21 THE ALTERNATES: Yes.

22 THE COURT: All right, so you -- that's where you  
23 will report, down there.

24 There may be something in the newspaper on this case  
25 and so be careful, don't be reading anything. Safe home, we'll

Colloquy

161

1 see you here tomorrow, thank you. You can go out this way, go  
2 around the back.

3 (PAUSE - THE JURY LEAVES THE COURTROOM)

4 THE COURT: Okay, we'll see you tomorrow then?

5 MS. BAGLIVI: Judge, do you want us here to send them  
6 out or how are you going to -- you're going to just send --  
7 tell them to start deliberating once they're all here or do you  
8 want us present to do a roll call in the courtroom?

9 THE COURT: Yeah, we're going to do a roll call on  
10 this one.

11 MS. BAGLIVI: Okay.

12 THE COURT: What do you think?

13 MR. WEICHSEL: I -- I don't think -- I -- for my  
14 purposes I don't think -- if they're all here, judge, they can  
15 start deliberating.

16 THE COURT: All right, when we get all 12 here and I  
17 can do a roll call without you, that's the --

18 MS. BAGLIVI: Yeah, I would just like to do the same  
19 thing that Mr. -- I don't want one of us here and one of us not  
20 here.

21 MR. WEICHSEL: Yeah, I understand that.

22 MS. BAGLIVI: So whichever the court --

23 MR. WEICHSEL: Judge, I don't think we have to be  
24 here unless you really --

25 MS. BAGLIVI: No, I don't, I just.

Colloquy

162

1 MR. WEICHSEL: No, I don't either, judge.

2 THE COURT: Well you've got to be here for your  
3 evidence.

4 MS. BAGLIVI: Well no, the evidence is staying here,  
5 it's being locked up.

6 THE COURT OFFICER: We're going to lock everything in  
7 the holding cell, Your Honor.

8 MS. BAGLIVI: So --

9 THE COURT: All right, then I'll -- when the 12 of  
10 them are here in the morning I'll start them deliberating.  
11 Okay?

12 MS. BAGLIVI: Okay; without us?

13 THE COURT: Yeah, and you're going to go to your  
14 office, Mr. Weichsel?

15 MS. BAGLIVI: I'll be in --

16 MR. WEICHSEL: I'll be at my office, judge.

17 THE COURT: All right, and you'll be in your office?

18 MS. BAGLIVI: And I'll be in my office.

19 THE COURT: All right, and you'll be in the circle?

20 All right? She has to come over and be in the circle.

21 MR. WEICHSEL: Judge, I -- just a question of  
22 logistics. I have some change of clean clothes that she wants  
23 to wear in the morning. What -- should I bring them to the jail  
24 or the circle or?

25 THE COURT: They may be covering that course now in

1 the judicial college and I'm not there.

2 MR. WEICHSEL: I don't know, judge, I'm just a  
3 lawyer.

4 THE COURT: I don't know either.

5 MS. BAGLIVI: I think you bring them to the jail  
6 because we had a problem last time; you had them here and they  
7 would not let her change here.

8 MR. WEICHSEL: Okay. I'll get them over to the jail.

9 MS. BAGLIVI: Probably at the jail.

10 THE COURT: Get them over to the jail this evening.

11 MR. WEICHSEL: I will. Okay, thank you, Your Honor.

12 MS. BAGLIVI: Good night.

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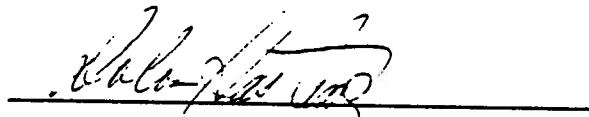
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CERTIFICATION

I, Dolores Hastings, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Bergen County Superior Court, Law Division, Criminal Part, on November 25, 1996, on tape number 191-96, index number from 00:00:00 to 04:44:20 and index number from 05:08:05 to 05:11:43, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded.



Dolores Hastings

417

AOC Number

KEMCO TRANS, INC.

Agency Name

7/11/97

Date